



EnergyAustralia

LIGHT THE WAY

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Ben Davis
Director
Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

Online submission

Dear Mr Davis,

AEMC Review of the Retailer of Last Resort Scheme

EnergyAustralia welcomes the opportunity to respond to the AEMC's Consultation Paper on the Retailer of Last Resort Scheme (Consultation paper).

EnergyAustralia is one of Australia's largest energy companies with approximately 2.5 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. We also own and operate a multi-billion-dollar energy generation portfolio across Australia, including coal, gas, and wind assets with control of over 4,500MW of generation in the National Electricity Market (NEM).

We agree with the Commission's view that improvements to some aspects of the Retailer of Last Resort (RoLR) scheme should be made. Our submission is set out below and covers key issues for EnergyAustralia.

Impacted customer transfer to Market Retail Contracts

The Commission has proposed to change the obligation for customers to be transferred to the Designated RoLR's Standard Retail Contract (SRC), to allow a Designated RoLR to transfer the customer to a Market offer (and Market Retail Contract (MRC)) instead. Under this change, RoLRs would have the ability to submit, for the AER's approval, a Market offer; and if the AER approved a RoLR's Market offer, the customers of a failed retailer would be placed on to this offer.

EnergyAustralia recognises the benefits of this change through the form of potential cost savings to customers that would result, due to Market offer prices being lower than Standing offer prices (the Default Market offer or the relevant regulated price for states/territories in which the DMO does not apply).

The size of these cost savings were recently assessed by the ACCC. The ACCC's *Inquiry into the National Electricity Market September 2020 Report*¹ (ACCC September 2020 Report) stated:

- The median effective price paid by residential Standard Offer customers in Victoria, NSW, SA and South East Qld was around 17 per cent higher than Market offer customers in 2019.

¹ <https://www.accc.gov.au/system/files/Inquiry%20into%20the%20National%20Electricity%20Market%20-%20September%202020%20report.pdf>, page 5

For Standing offer residential customers that use a median amount of electricity this difference is a saving of \$219 a year.

- In the case of small business Standing offer customers, the median effective price across the four regions was around 25 per cent higher in 2019 compared to Market offer customers, which could equate to a saving of \$424 a year for Standing offer customers using the median amount of energy.

We consider enabling transfers to Market offers could be a simple and effective way to enable the Designated RoLR to place a failed retailer's customers on an offer which is offered in market, and which is likely to be competitive with other retailer offers.

Market offers will provide lower prices to these impacted customers compared to the DMO or regulated price, which will be important for the customers that do not engage or shop around and remain on that same offer.

The Commission states that SRCs offer a higher level of consumer protections as these contracts reflect the Model Terms and Conditions under the *National Energy Retail Rules* – and therefore transferring impacted customers to Market offers may mean those customers do not benefit from those protections.

While historically this may have been the case, today there are many protections (many introduced in the last 5 years) that have been designed for the specific attributes of Market Retail Contracts. These include benefit change notices; price change notices; explicit informed consent to terms and conditions which can change tariffs, charges or benefits; and regulations around conditional discounts. Market offers do not lack consumer protections, but rather different protections apply.

Different protections are appropriate when the different nature of MRCs and SRCs is considered. In our view, the protections that apply to MRCs have evolved to address specific issues with Market offers, while the Model Terms and Conditions set out reasonable terms of supply which reflect that the SRC may be used as a default arrangement where there is no contract in place. The Model Terms and Conditions that apply to SRCs therefore relate to general contract matters (e.g. liability) as well as regulated matters, to reflect that it is a "fall back" supply arrangement.

For MRCs, it is in the retailer's interest that the terms of energy supply are not only reasonable but also competitive (as evidenced above by lower prices). The MRC is therefore not only a feasible alternative but in many instances will offer customers better terms of supply than a Standing Offer/SRC which was developed as a fall back supply arrangement.

We also support the Australian Energy Regulator's (AER) role in approving MRCs as an important check and safeguard in the AEMC's proposal, to ensure that inappropriate MRCs are not used in the RoLR context.

In addition, we consider that RoLRs should have some optionality and be able to choose between placing impacted customers on a Standing offer or Market offer for a particular RoLR event, which should be confirmed by the AER before designation. That is, RoLRs should not be locked into either option.

Approval of Market Retail Contracts and other processes

The Consultation Paper states that the Australian Energy Regulator (AER) would assess the benefits of the Market offer against the RoLR's Standing offer (in relation to tariffs and non-price terms and conditions). If this assessment were to evolve to effectively compare the Market offers across different RoLRs, we note that this would be a complex undertaking and it could lead to inaccurate conclusions about which plan offer is the most competitive. This is due to inherent difficulties in assessing price and non-price terms as a whole to understand the value provided to the customer. For instance, price certainty for a customer i.e. no price variation for a longer period, may be offered in exchange for a slightly higher price.

From a process perspective, if the AEMC were to adopt the change to allow transfers to Market offers, the *National Energy Retail Law* (NERL) should also be amended to require that the AER's ROLR guidelines specify:

- **The criteria for selecting the Market offer** which should be considered by both the applicant retailer when choosing the Market offer and the AER in its approval process. Some relevant considerations are:
 - The criteria should extend beyond the price offered and consider price related and non-price terms – particularly exit fee terms or terms which may present a barrier to switching for customers.
 - The criteria for selecting the Market offer should reflect that any small customer may be transferred under the ROLR, and so offers which are very specific to customer characteristics (such as eligibility conditions) will not be appropriate.

Aside from the above factors, any criteria should not be unduly restrictive. It is imperative that the retailer maintain full discretion as to which MRC they submit for ROLR purposes, given that their choice of Market offer will not only seek to offer impacted customers a competitive offer but will also balance the wholesale price risk considerations for the impacted customers' load.

- **The process for submitting Market offers to the AER for approval** - We observe that the AER would likely need to have in place approved MRCs when a retailer becomes a Registered ROLR, which would mean an initial process should be run to approve the MRC ahead of any ROLR events. However, a retailer should have the ability to withdraw that MRC and submit another for approval (if that MRC expires or is otherwise no longer appropriate, for example, due to changes in wholesale energy and network costs – reprices typically occur annually).

Further, we note that the requirements for retailers to obtain explicit informed consent for entry by the customer into a MRC and cooling off requirements, will need to be waived for customers transferring from a failed retailer to the Designated RoLR. While this of itself does not pose issues, retailers will likely have to implement a solution to ensure that these customers can be distinguished from the rest of their general customer base after they are transferred, in case there is a need to identify them at a later time (e.g. compliance audit).

Separately, we suggest that the AEMC should clarify whether having in place an approved MRC for ROLR purposes would be taken into account by the AER in deciding whether to appoint a retailer as a Designated RoLR at the time of a ROLR event (current matters are specified under section 133 of the NERL). However, as above, we note the complexities and potential inaccuracies of the AER performing assessments which attempt to compare different ROLR Market offers and we would not support any designation of RoLRs on this basis.

ROLR cost recovery

The RoLR scheme imposes 'upfront' costs on the ROLR which are incurred due to events outside the ROLR's control (another retailer's failure). These upfront costs create a potential risk of financial contagion, particularly if a large retailer were to ever fail and the additional load of transferred customers is very significant.

The key challenge for the RoLR is to fund an immediate increase in working capital and credit support to meet the settlement and prudential requirements for energy. In addition to these immediate issues, there is also the risk that the Designated RoLR may not completely recover the costs of a ROLR event from the impacted customers, particularly for mass market and small business customers. This is due to the way retailer tariffs are set for those customers which aims to manage the customer's exposure to the costs of energy supply.

Additionally, retailers may not recover the costs of a ROLR event from affected customers due to the high likelihood that a customer will churn to a new retailer in a short period of time following the ROLR event. In relation to churn, customers transferring from a failed retailer in a ROLR event will be a mix of Market offer and Standing offer customers, with the large majority being Market offer customers – around 91.7% and 84.7% of residential and small business customers are Market offer

Customers.² This means the majority of customers affected by a ROLR are on Market offers and likely to be engaged with the market. They are likely to shop around, particularly after they receive notice from the Designated Retailer that a ROLR has occurred (and that they are now being supplied by a retailer they did not choose).

Given the risks around ROLR event cost recovery, we welcome the proposed changes to provide more certainty around the types of costs associated with a ROLR that can be recovered. This will assist in lowering the risks around the recovery of these costs which might assist Designated RoLRs in obtaining additional funds from financial lenders or other funding sources (where required).

We agree with the explicit addition of examples of ROLR costs to include wholesale energy costs and costs of increasing credit support to AEMO.

In relation to wholesale energy costs, more detailed examples of recoverable costs could be added to the NERL or AER ROLR guideline, in line with the below:

- With respect to wholesale energy cost and for mass market and small business customers (Small Customers):
 - For the 24 hours between the ROLR event being notified and designation of the ROLR, the wholesale energy costs should be fully recoverable given the retailer would not have known which customers it was the Designated RoLR for, to make supply arrangements;
 - Even after the retailer is notified of the customers that it is the Designated RoLR for, there is a period of time from notification until a ROLR is able to complete a position and hedge its electricity supply costs for the additional load associated with the impacted customers. The ROLR would be exposed to the spot price for that additional load until hedging has occurred, and the cost of that electricity should be recoverable. The period of time required involves the time taken to receive the metering data to forecast customer load, develop a wholesale position, and then the time taken for traders to enact contracts to implement that position.
 - The costs of this additional hedging cover should also be recoverable.
 - Even after the additional load is hedged, the ROLR should be able to recover the difference between wholesale energy costs secured under short term hedging for the impacted customer load profile, and the hedging under historical conditions for the retailer's general customer base (particularly if wholesale prices have trended upwards from the historical to current period).
- For Large Customers, different wholesale energy cost considerations may apply. The significant load of Large Customers increases risks to retailers from a ROLR event, but Large Customer contracts are likely to be cost reflective of the wholesale spot price to reduce this pricing risk, and so the costs that cannot be recovered from the customer may be less significant. However, this is a consideration that can be considered by retailers and the AER when applying for ROLR cost recovery, rather than seeking to place any limitations in the NERL or ROLR guidelines.

The above presents a reasonable and fair approach to wholesale energy cost recovery which when combined with the overarching prudent cost criterion, is an appropriate and proportionate approach.

We also consider that other costs (which are not recoverable from the customer) should also be specifically mentioned in the NERL or in the AER's ROLR guidelines:

- Green costs – green costs should cover any green schemes that are tradable and for similar reasons that apply to wholesale energy costs, present a price risk. These include Large-scale Renewable Energy Target (Large-Scale Generation Certificates) and state energy efficiency certificate schemes (NSW's Energy Saving Certificates and Victorian Energy Efficiency Certificates).
- AEMO market charges

² <https://www.accc.gov.au/system/files/Inquiry%20into%20the%20National%20Electricity%20Market%20-%20September%202020%20report.pdf>

- Any other pass throughs or additional market participant levies that impact retailers, which do not exist today but may be imposed in the future.
- Administrative costs – we agree with the views in the Consultation Paper that the administrative costs of processing and onboarding the customers of the failed retailer should be recoverable by the ROLR. These include:
 - Staffing costs to process these customers into billing systems and ensure that key details - life support, concessions, rebates, and centrepay arrangements are reflected accurately in the system.
 - Staffing costs to contact the customer and confirm life support and concession details, if required.
 - Costs of sending communications about the ROLR event to impacted customers.

While we support greater certainty over ROLR cost recovery and acknowledge it may support entry of other retailers who wish to become Additional RoLRs, we also highlight the importance of the ROLR criteria (which the AER must consider when registering Additional RoLRs under section 123 of NERL). These criteria are key to the effectiveness of the ROLR framework and minimising any risk of financial contagion. Critically, the criteria include the financial resources criterion which is the extent to which the retailer has adequate resources so that it will have the financial viability and financial capacity to meet the obligations of a ROLR. This criterion should continue to fully apply in the AER’s assessment of Additional RoLRs.

Data quality issues

We ask the AEMC to consider changes to the NERL that would support the provision of timely and accurate data to help the RoLR understand, price and cover the new load from impacted customers. RoLRs mainly use historical metering data to undertake this assessment.

The move to Global Settlements and the removal of the Local Area Retailer (LAR) role will mean that default RoLRs will not receive metering data as the LAR for all connection points in that distribution area. They will only obtain metering data where they are the retailer for a connection point (i.e. the Financially Responsible Market Participant). It will therefore become even more important for metering data (provided under a RoLR regulatory information notice) to be provided under the RoLR scheme promptly and as soon as practicable after a retailer is notified as Designated RoLR. Actual consumption data is already listed as data a notice must cover – but the RoLR guidelines should further specify that the data should be delivered in a NEM 12 file format and to support forecasting, particularly over a large number of customers, the data should cover 3 years’ worth of data (or where unavailable, at the least 12 months).

In our experience, improvements could also be made to resolve data quality issues around customer and site data returned in response to a RoLR regulatory information notice. For instance, life support and hardship information could be improved so that these do not need to be verified, which adds time and cost to the onboarding of impacted customers, at a time when prompt onboarding is important to ensuring continuity of customer service.

To mitigate data quality issues, the AER could explore issuing RoLR Regulatory Information notices earlier and well before the RoLR event. This appears to already be enabled under the NERL (section 152(1)) so it may be a matter of changing general practice. The notice could be issued at the time a the retailer notifies the AER and AEMO when it knows of events that affect its ability to maintain continuity of the sale of energy or that a RoLR event might occur (notification required under section 150(2) of NERL).

Further, to address the accuracy issue, additional obligations should be imposed to require a failed retailer to take reasonable steps to ensure the data they provide in response to a RoLR Regulatory Information Notice is correct.

Embedded networks

The Consultation Paper asks whether ROLR arrangements for embedded networks should be flagged as an area for further review. As the Paper notes ROLR arrangements for embedded networks were considered extensively in the AEMC's *Updating the regulatory frameworks for embedded networks review* (Embedded Networks review). The recommendations in that review are a sensible approach to ROLR for embedded network arrangements. We have not identified any gaps in the AEMC's approach and would only support a further review by the AEMC if clear gaps are identified.

If you have any questions in relation to this submission, please contact me (Selena.liu@energyaustralia.com.au or 03 8628 1548)

Regards,

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