

Terms of reference

Review of the Retailer of Last Resort scheme

8 October 2020

The ministerial forum of Energy Ministers (formerly COAG Energy Council) requests the Australian Energy Market Commission (Commission) to conduct a review to provide advice to governments on updating the Retailer of Last Resort (ROLR) framework, under section 228 of the National Energy Retail Law.

The purpose of this review is to advise on amendments to the ROLR frameworks. In the 2020 Retail Energy Competition Review the Commission identified that the Covid-19 pandemic had heightened the risk of retailer failures and use of the existing ROLR scheme may impact NEM financial system stability, retail market competition and small consumers. The Commission made a number of recommendations for changes to the regulatory frameworks to address these issues.¹ The Australian Energy Regulator (AER) has also raised an additional issue in discussions with the AEMC.

Specifically, this review will provide a report to governments on what changes should be made to the ROLR scheme based on public consultation on the ROLR recommendations in the 2020 Retail Energy Competition Review and the additional issue identified by the AER.

Output

The output of this review will be a report to the ministerial forum of Energy Ministers that includes:

- policy advice on changes to the NER, that could subsequently form the basis of a rule change request to the AEMC
- policy advice for recommended changes to the NERL
- advice on other ROLR issues that could warrant further consideration.

Scope

The scope of the changes to the ROLR framework to be considered includes recommendations from the 2020 Retail Energy Competition Review and the issue raised by the AER. Specifically, it includes consideration of amendments to the ROLR regime to:

- remove the requirement for the customers of a failed retailer to be transferred only to the standard retail contract of the designated ROLR, to improve consumer outcomes
- revise the ROLR cost recovery arrangements, to give the ROLR greater certainty that reasonable ROLR costs can be recovered and will be recovered in a fast-tracked process if appropriate
- revise the framework for ROLR designation, to reduce uncertainty in the application of the ROLR scheme and give the AER more time to decide which retailer(s) should be appointed ROLR(s)
- delay the requirement for the ROLR to provide credit support to AEMO associated with the additional customers, to give the ROLR more time to meet the requirements which may be significant

¹ AEMC, 2020 Retail energy competition review, Final report, 30 June 2020. Please see https://www.aemc.gov.au/sites/default/files/documents/2020_retail_energy_competition_review_-_final_report.pdf

- make ROLR Plan requirements less prescriptive, by changing references from “must” to “may”
- make directly related or consequential changes that flow from the above changes as appropriate.²

The Commission may consult on and consider stakeholder feedback on other issues related to the ROLR regime for the purposes of identifying issues that warrant further consideration.

Approach and key principles

In conducting the review, the Commission will be guided by the National Electricity Objective and National Energy Retail Objective.

The Commission will need to consider the existing ROLR framework included in the NERL. The Commission is to take into account the work done in the 2015 NEM Financial Resilience Review³ and the 2020 Retail Energy Competition Review.

A reference group, comprising jurisdictional representatives and the AER, will be created to provide input to this review. This reference group will provide input during the review on the importance, priority and acceptability of the issues and proposed solutions considered through the review and provide guidance to the Commission with the aim of streamlining the jurisdictional processes which would follow the review, if the Commission’s recommendations are accepted.

Dates for key deliverables

At a minimum, the Commission is to publish:

- a consultation paper
- a final report.

The Commission must provide an embargoed copy of the final report to the reference group three months after the Commission initiates the review (exclusive of holiday periods).

The Commission must provide an embargoed copy of the final report to the ministerial forum of Energy Ministers (formerly COAG Energy Council) at least five business days after the embargoed copy of the final report has been provided to the reference group.

The Commission must publish the final report at least five business days after the embargoed copy of the final report has been provided to the ministerial forum of Energy Ministers (formerly COAG Energy Council).

Consultation

In conducting the review the Commission must consult with:

- the Australian Energy Regulator

² The 2020 Retail Energy Competition Review also recommended that the details of the ROLR regime should be removed from the NERL and inserted in the NERR, this is not considered in scope of this review.

³ AEMC 2015, NEM financial market resilience, Final report, 6 March 2015, Sydney. Please see <https://www.aemc.gov.au/sites/default/files/content/4d77eb24-c866-4dcd-9d3f-019a61cf417d/NEM-Financial-Market-Resilience-Final-Report-Publication-version.PDF>.

- the Australian Energy Market Operator
- energy departments of jurisdictions which participate in the ROLR scheme
- retailers or representatives of retailers
- representatives of consumers
- ombudsmen of jurisdictions which participate in the ROLR scheme.

The Commission may consult with other stakeholders as necessary to complete the review.