

Reliability Compliance Procedures and Guidelines

Retailer Reliability Obligation

Final Decision

June 2023

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Glossary

Term	Definition
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AER PoLR Report	AER Procurer of Last Resort Report
Compliance TI	Compliance Trading Interval
Draft Decision	Draft Decision and Notice of Consultation for the Reliability Compliance Procedures and Guidelines
Draft Guidelines	Draft Reliability Compliance Procedures and Guidelines
Electricity Law	National Electricity Law
Electricity Rules	National Electricity Rules
Final Guidelines	Final Reliability Compliance Procedures and Guidelines
Guidelines	Reliability Compliance Procedures and Guidelines developed under s. 18Z(1) of the Electricity Law
ISP	Integrated System Plan
Issues Paper	Issues Paper and Notice of Consultation for the development of the Reliability Compliance Procedures and Guidelines
MLO	Market Liquidity Obligation
NCP	Net Contract Position
NCP Report	Net Contract Position Report
PoLR	Procurer of Last Resort
PoLR TI	Procurer of Last Resort Trading Interval
RERT	Reliability and Emergency Reserve Trader
AER Retail Guidelines	The AER's Compliance Procedures and Guidelines developed under s. 281 of the National Energy Retail Law
RRO	Retailer Reliability Obligation
Standard	AS/ISO 37301 – Compliance Management Systems

1 Introduction

On 1 July 2019, the *Retailer Reliability Obligation* (RRO)¹ came into effect through amendments to the National Electricity Law (Electricity Law) and National Electricity Rules (Electricity Rules).² The RRO framework in this legislation is supported by a suite of AER guidelines,³ which provide detail on how the various stages of the RRO operate and impose obligations on entities involved in the RRO.

Subsection 18ZI(1) of the Electricity Law requires the AER to make Reliability Compliance Procedures and Guidelines (the Guidelines), which add to this suite of guidelines. They must be made and published in accordance with the *Rules consultation procedures* set out in Part F of Chapter 8 of the Electricity Rules.

Section 18ZI of the Electricity Law and clauses 4A.F.7 and 4A.F.8 of the Electricity Rules contemplate that the Guidelines may, without limitation, provide guidance:

- for *regulated entities* about compliance with the *reliability obligations*,⁴ including but not limited to:
 - the process and timeframes for notifying *liable entities* and the *Australian Energy Market Operator* (AEMO) about the AER's compliance assessments at the conclusion of a *reliability gap period*;⁵ and
 - the information the AER will include in the AER Procurer of Last Resort Report (*AER PoLR Report*) to AEMO at the conclusion of a *reliability gap period*;⁶
- about the policies, systems and procedures that *regulated entities* must establish and observe under section 18ZB of the Electricity Law to monitor their own compliance with the RRO;⁷
- on the information and data *regulated entities* must provide to the AER under section 18ZD of the Electricity Law;⁸ and

¹ In this Final Decision, words and phrases that are presented in italics have the meaning given to them in the Electricity Law and Rules.

² Electricity Law, s. 2: *Retailer Reliability Obligation* means: (a) Part 2A of the Electricity Law; and (b) the provisions of the Electricity Rules that relate to Part 2A of the Electricity Law. These rules include Chapter 4A of the Electricity Rules.

³ In addition to these Final Guidelines, there are currently five other AER guidelines which support the operation of the RRO. These are the Opt-in Guidelines, Forecasting Best Practice Guidelines, Interim Reliability Instrument Guidelines, Interim Market Liquidity Obligation Guidelines and Interim Contracts and Firmness Guidelines. These guidelines can be viewed at <https://www.aer.gov.au/retail-markets/retailer-reliability-obligation/guidelines-to-support-the-retailer-reliability-obligation>.

⁴ Electricity Law, s. 2: The *reliability obligations* are ss. 14P(1) and (3) and 14R(2) of the Electricity Law.

⁵ Electricity Rules, cl. 4A.F.7(c)(1) and (2), and 4A.F.7(a).

⁶ Electricity Law, s. 18ZI(2)(c); Electricity Rules, cl. 4A.F.8(a).

⁷ Electricity Law, s. 18ZI(2)(a)(ii).

⁸ Electricity Law, s. 18ZI(2)(a)(iii).

- on carrying out *compliance audits* under sections 18ZE and 18ZF of the Electricity Law, including the costs payable by *regulated entities* for an audit carried out by or on behalf of the AER.⁹

We now present the Final Reliability Compliance Procedures and Guidelines (Final Guidelines). This Final Decision document should be read alongside the Final Guidelines. This Final Decision and Final Guidelines explain what is required, by both the AER and *regulated entities*, to comply with the RRO in accordance with the Electricity Rules.

In accordance with our obligations under the *Rules consultation procedures*, the Final Guidelines set out our final conclusions. This Final Decision details our determination, including the procedures we followed in considering the issues, our underlying reasons, summaries of key issues and AER final positions. The Final Decision also contains a flowchart (see Figure 1 below) to assist *regulated entities* in understanding the timing of steps in the AER's compliance assessment process for the *reliability obligations*.

1.1 Consultation undertaken

On 3 November 2022, we published our Issues Paper¹⁰ in relation to development of the Guidelines. The Issues Paper discussed key issues and asked questions seeking stakeholder input on specific aspects of proposed requirements, content, processes and timing to be included in the Guidelines. Consultation closed on 8 December 2022 and the AER received one submission.

On 3 March 2023, we published a Draft Decision and Draft Guidelines.¹¹ The Draft Guidelines set out our draft positions. The Draft Decision detailed our draft determination, issues raised by stakeholders and AER responses, including the process we followed in considering those issues. Consultation closed on 11 April 2023; we received no submissions.

1.2 Process for development

In developing the Guidelines, the AER has had regard to the Electricity Law and Electricity Rules, including the *National Electricity Objective*.

The AER has also considered the guidance contained in our other five guidelines that support the RRO:

- **Opt-in Guidelines** – set out information on the process for *market customers* to opt-in to the RRO rather than having their *retailer* manage the obligation on their behalf.
- **Forecasting Best Practice Guidelines** – provide procedural guidance to promote transparency and stakeholder confidence in the forecasting practices and processes that

⁹ Electricity Law, s. 18ZI(2)(b).

¹⁰ The Issues Paper can be viewed at https://www.aer.gov.au/system/files/AER%20-%20Reliability%20Compliance%20Procedures%20and%20Guidelines%20-%20Issues%20Paper%20and%20Notice%20of%20Consultation%20-%20November%202022_0.pdf.

¹¹ The Draft Decision and Draft Guidelines can be viewed at <https://www.aer.gov.au/retail-markets/guidelines-reviews/retailer-reliability-obligation-reliability-compliance-procedures-and-guidelines/draft-decision>.

AEMO undertakes in developing a *reliability forecast* and the *integrated system plan* (ISP).

- **Interim Reliability Instrument Guidelines** – inform stakeholders how the AER will consider the approval criteria in respect of a request from AEMO for a *reliability instrument* to be made as set out in the Electricity Rules and how the AER will consult with stakeholders on a reliability instrument request, and define what information AEMO must provide the AER as part of a reliability instrument request and the form of this information.
- **Interim Market Liquidity Obligation (MLO) Guidelines** – inform relevant participants of our approach to the MLO, including monitoring and enforcing compliance with the Electricity Rules regarding the participation, conduct and operation of the MLO by *MLO groups*, *MLO generators* and *MLO nominees*.
- **Interim Contracts and Firmness Guidelines** – inform relevant participants of the *firmness methodologies* that are to be applied when assessing contracts for the net contract position report (*NCP Report*).

The AER has also considered the views and issues put forward in response to the Issues Paper. As noted above, we did not receive any submissions in response to the Draft Decision and Draft Guidelines.

As discussed in the Draft Decision, the AER received enquiries from stakeholders outside the formal consultation process in relation to the *NCP report* and development of *bespoke firmness methodologies*. The AER has published a frequently asked questions document to reflect our responses to these and other queries from stakeholders relating to the RRO.¹²

These enquiries prompted the AER to include additional guidance and requirements in the Draft Guidelines. Specifically, we:

- provided additional guidance as to the AER's expectations regarding the role of the *Independent Auditor* in development of *bespoke firmness methodologies* and factors, as discussed in section 2.1 below; and
- introduced a requirement for a *liable entity* to provide certain information upon request from the AER to assist the AER to verify information contained in the *NCP report* and to assess the *liable entity's* compliance with the *reliability obligations*. This is discussed in section 2.4 below.

We have retained the above requirement and additional guidance in the Final Guidelines.

Part 2 of this document provides a summary of the AER's positions relating to the key issues in this consultation.

¹² The Frequently asked questions – RRO can be viewed at <https://www.aer.gov.au/retail-markets/retailer-reliability-obligation/frequently-asked-questions>.

2 AER positions on relevant issues

The AER’s consultation process for the Reliability Compliance Procedures and Guidelines related to the following issues:

- **Development and submission of net contract position report**
 - AER expectations regarding the development of *bespoke firmness methodologies* and factors.
- **Assessment process for ‘reliability obligations’**
 - Content and timing of the AER’s notice of non-compliance to a *liable entity*;
 - Content and timing of a *liable entity*’s response to a notice; and
 - Timeframe for submission of an *AER PoLR Report* to AEMO.
- **Requirement to establish appropriate policies, systems and procedures**
 - Use of ‘AS/ISO 37301 – Compliance Management Systems’ (the Standard) as a benchmark for the establishment and observation by *regulated entities* of internal policies, systems and procedures to efficiently and effectively monitor their own compliance with the RRO.
- **Requirement to provide data and information**
 - Introduction of a requirement for *liable entities* to provide certain information in relation to *NCP reports* upon request from the AER.
- **Compliance audits**
 - Criteria for the experience and independence of auditors;
 - Requirements for *regulated entity* cooperation;
 - Process for audits carried out by or on behalf of the AER, including the process for cost recovery from *regulated entities*; and
 - Process for audits carried out by or on behalf of *regulated entities*.

Our detailed positions on these issues are set out in sections 2.1 to 2.5 of this Final Decision.

2.1 Development and submission of net contract position report

All *liable entities* must submit an *NCP report* to the AER by the *reporting day* for each *forecast reliability gap period*.¹³ The *NCP report* demonstrates a *liable entity*’s *net contract position* (NCP) for the *forecast reliability gap period*, as it was on the *contract position day*. The *NCP report* is required to include the specific information set out in clause 4A.E.6(b) of the Electricity Rules.

¹³ A *new entrant* for a *region* is a person who meets the requirements of cl. 4A.D.3 of the Electricity Rules. In accordance with Electricity Rules cl. 4A.C.10, if the AER makes a *T-1 reliability instrument* it must set a *new entrant contract position day* and a *new entrant reporting day*. For a *new entrant*, the *reporting day* means the day stated in the relevant *T-1 reliability instrument*.

This information, and the manner in which it must be submitted, is outlined in section 9 of the AER’s Interim Contracts and Firmness Guidelines. The AER has published the written report template and NCP Report Excel Template on its website, which *liable entities* are required to complete and submit as part of their *NCP report*.¹⁴

A *liable entity* must develop any *bespoke firmness methodology* in accordance with the guidance provided in sections 3 and 5 of the AER’s Interim Contracts and Firmness Guidelines, and have those methodologies and resulting firmness factors approved by an *Independent Auditor* before including them in the *NCP report*.

The Interim Contracts and Firmness Guidelines, which govern the content of the *NCP report* and the associated role of the *Independent Auditor*, are silent on whether the *Independent Auditor* may assist in developing the *bespoke firmness methodologies* and factors. As we consider this an important issue to address in a timely manner, we have included guidance on this in the Final Guidelines.

The AER’s position is that while a *liable entity* may seek external assistance in developing *bespoke firmness methodologies* and factors, this should not involve the *Independent Auditor* who will approve them, as it would compromise the independence of the *Independent Auditor*. Once submitted to the *Independent Auditor* for approval, it is open to the *Independent Auditor* to make necessary corrections to those factors and methodologies before approving them.

The AER expects *Independent Auditors* to maintain sufficient records to verify and substantiate any completed assessments and approvals of a *bespoke firmness methodology* or firmness factor relied upon by a *liable entity* in an *NCP report*, and provide those records to the AER on request.¹⁵ We may update the Interim Contracts and Firmness Guidelines to include these requirements when they are next reviewed.¹⁶

2.2 Assessment process for ‘reliability obligations’

The RRO places contracting and reporting obligations on *liable entities* in a given *region* when a *reliability gap* has been identified and a *reliability instrument* made. A key component of the RRO framework is the *reliability obligations*.

¹⁴ The written report template and NCP Report Excel Template can be viewed at <https://www.aer.gov.au/retail-markets/guidelines-reviews/retailer-reliability-obligation-interim-contracts-and-firmness-guideline>. There are no specific templates for the other documents that must be submitted as part of the *NCP report*, which are:

- an *Independent Auditors* report/s (if any *bespoke firmness methodologies* have been applied to calculate firmness factors for *non-standard qualifying contracts*); and
- a document outlining any adjustments made for *non-qualifying contracts* that increase exposure to spot price volatility (if any adjustments have been made for *non-qualifying contracts*).

¹⁵ See section 3 of the Auditors Panel Handbook for the responsibilities of *Independent Auditors* following appointment to the *Auditors Panel*: <https://www.aer.gov.au/system/files/Auditors%20Panel%20Handbook%20-%20Version%202%20-%20April%202021.pdf>.

¹⁶ This type of guidance is permitted by subsection 18ZI(2)(a)(iii) of the Electricity Law, which provides that, without limitation, the Guidelines may provide guidance for *regulated entities* about compliance with the *reliability obligations*. Section 3 of the Final Guidelines provides further details of the assessment process for the *reliability obligations*.

The *reliability obligations* are those applying to *regulated entities* under subsections 14P(1) and (3) and 14R(2) of the Electricity Law.¹⁷

- **Section 14P – Obligation to report NCP**

(1) The *liable entity* must give the AER a report about the *liable entity's* [NCP] for the stated *trading intervals* during the *reliability gap period* as at the *contract position day*—

(a) that complies with subsection (2); and

(b) on or before the *reporting day* stated in the *T-1 reliability instrument*.¹⁸

(2) The report must—

(a) include the information required under the Electricity Rules; and

(b) be prepared and given in the manner and form required by the Electricity Rules.¹⁹

(3) The *liable entity* must not provide information in a report the *liable entity* knows is false or misleading in a material particular.

- **Section 14R(2) – Obligation to have contracted sufficiently for *one-in-two year peak demand forecast***

The *liable entity* must comply with the obligation that the *liable entity's* [NCP] for a *trading interval* is not less than the *liable entity's* share of the *one-in-two year peak demand forecast* for the *trading interval* determined in accordance with the Electricity Rules.

These provisions inform our assessment of compliance following a *reliability gap period*, and AEMO's recovery of its costs as a procurer of last resort (PoLR) under the *Reliability and Emergency Reserve Trader* (RERT) framework. They are also *civil penalty provisions* and failure to comply with them may result in the AER seeking financial penalties should we decide to take enforcement action.

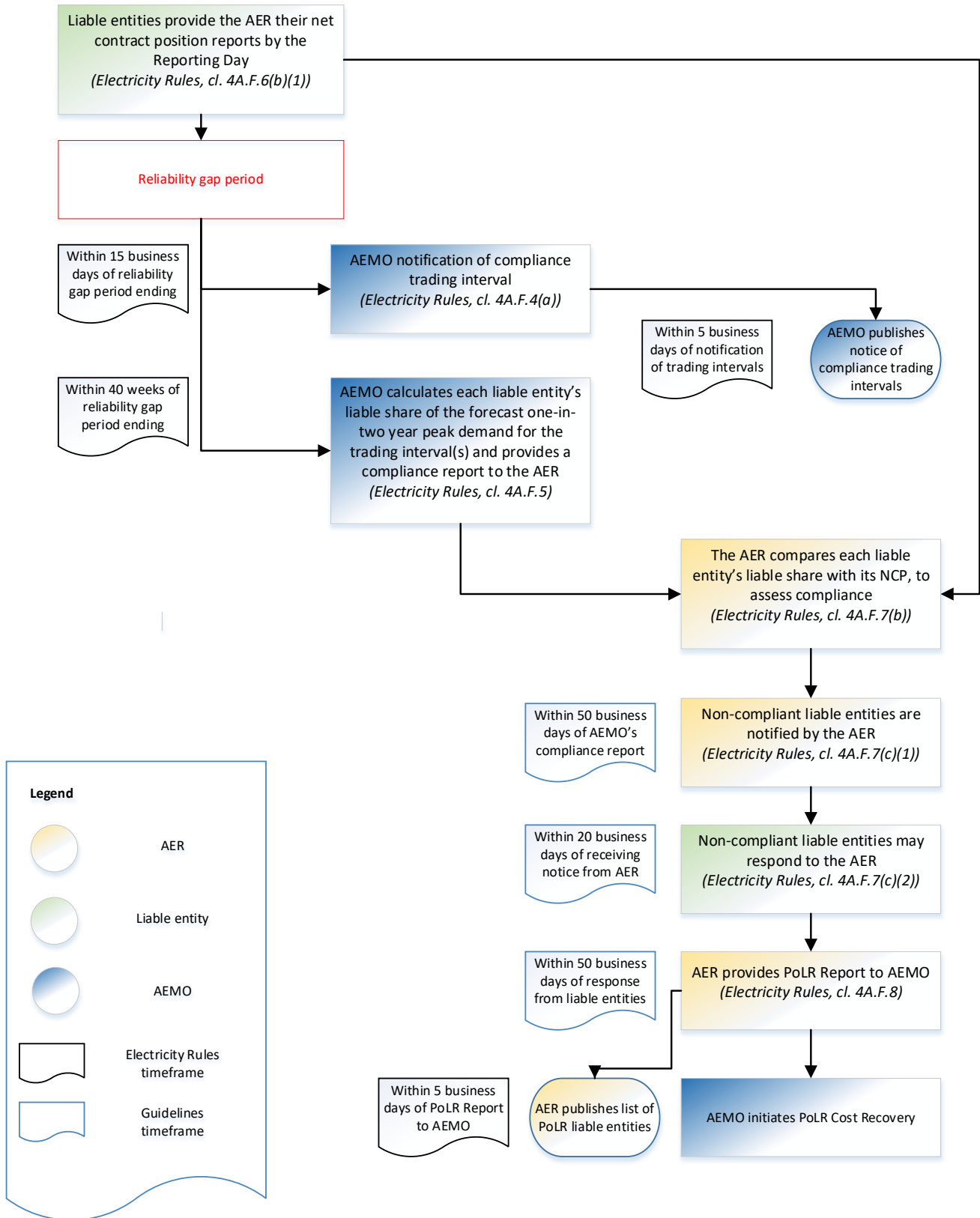
The steps involved in the AER's compliance assessment process for the *reliability obligations* are detailed in Figure 1.

¹⁷ Electricity Law, s. 2 – Definitions: '*Reliability obligations*'.

¹⁸ A *new entrant* for a *region* is a person who meets the requirements of cl. 4A.D.3 of the Electricity Rules. In accordance with Electricity Rules cl. 4A.C.10, if the AER makes a *T-1 reliability instrument* it must set a *new entrant contract position day* and a *new entrant reporting day*.

¹⁹ See also Electricity Rules, cl. 4A.E.6.

Figure 1 – AER compliance assessment process for the reliability obligations



2.2.1 Notice to a liable entity of non-compliance

The Guidelines outline the content to be included in the notice of assessment provided to a *liable entity* that its NCP for a compliance trading interval (*compliance TI*) is less than its *liable share*. The Guidelines also set out that the AER will provide written notification no later than 50 business days after we receive AEMO's compliance report,²⁰ noting the AER will endeavour to do this as soon as practicable.

This period of time will:

- allow us to accommodate a potentially large number of concurrent assessments;
- allow us to ask questions (if necessary) of AEMO in respect of its calculations of *liable share* and/or of *liable entities* in respect of their *NCP Reports*, including through AER information requests such as those contemplated under section 2.4 of this document;
- as contemplated in our Interim Contracts and Firmness Guidelines, allow for the potential use of *compliance audits* to determine whether the actual NCP of a *liable entity* for a *trading interval* is consistent with that set out in its *NCP Report*.

The AER may revisit this timeframe and update the Guidelines in accordance with clause 4A.F.6 of the Electricity Rules if it is clear, after assessments commence, that the timeframe is not fit for purpose.

The Guidelines set out that a notice of assessment under clause 4A.F.7(c)(1) remains valid where the AER provides it to a *liable entity* after 50 business days.²¹

2.2.2 Opportunity to respond to AER assessment

The Electricity Rules require the AER to give *liable entities* an opportunity to respond to a notice of assessment.²² Section 3.2 of the Guidelines outlines that any responses not accepting an assessment must be in writing and:

- clearly identify the errors the *liable entity* considers the AER has made in its calculation for the *compliance TI*;
- provide the *liable entity's* own calculation;
- include a quantitative decomposition of the variation between the *liable entity's* calculation and the AER's calculation. That is, a breakdown of the calculations into the relevant components, specifying the quantitative variation for each component;
- set out the basis for the *liable entity's* alternative calculation and the information relied upon; and
- clearly outline any information for which confidentiality is claimed.

This information will assist us to pinpoint the differences between the two calculations, and accurately assess the *liable entity's* response based on these differences.

²⁰ Electricity Rules, cl. 4A.F.7(c)(1).

²¹ Electricity Rules, cl. 4A.F.7(c).

²² Electricity Rules, cl. 4A.F.7(c)(2).

Responses must be submitted to the AER no later than 20 business days after the AER issues the notice of assessment.

2.2.3 Notification to AEMO for PoLR costs ('AER PoLR Report')

If, having considered the *liable entity's* response to the notice of assessment, the AER concludes that the *liable entity's* NCP is less than the *liable entity's liable share* for a *compliance TI*, the *liable entity* is a *PoLR liable entity* for that *compliance TI*. The AER must then provide an *AER PoLR Report* to AEMO.²³

The Electricity Rules set out certain information that the *AER PoLR Report* must contain and also allow the AER to use the Guidelines to set out additional information that we will include in the report.

The Guidelines provide that the *AER PoLR Report* will set out:

- the identity of the *PoLR liable entity*,²⁴
- particulars of the *PoLR liable entity's* non-compliance with the *reliability obligations* (including the *uncontracted MW position* for the *PoLR liable entity* for each *PoLR TI*);²⁵
- particulars of any disputes raised by a *liable entity* in response to a notice of assessment from the AER;
- a list of all *compliance TIs* AEMO has advised to the AER pursuant to clause 4A.F.4 of the Electricity Rules, including *compliance TIs* that the AER has assessed are not *PoLR TIs*;
- a list of all the *liable entities* the AER has considered as part of its assessment process; and
- any other information the AER considers relevant.

The AER will provide the report to AEMO no later than 50 business days after the final day that a non-compliant *liable entity* may respond to the AER's non-compliance notification (and therefore no later than 70 business days after issuing a non-compliance notification to a non-compliant *liable entity*). This period of time will allow the AER to:

- accommodate a potentially large number of concurrent responses (as noted in subsection 2.2.1 above); and
- ask questions of *liable entities* about their responses and, in the event that responses relate to AEMO's calculation of *liable share*, to put those issues to AEMO and consider our response for the *AER PoLR Report*.

We consider this proposed time will still allow AEMO's timely recovery of PoLR costs. The AER will endeavour to provide the *AER PoLR Report* to AEMO as soon as practicable, which in some circumstances may be sooner than 50 business days. Again, the AER may revisit

²³ Electricity Rules, cl. 4A.F.8(a).

²⁴ Electricity Rules, cl. 4A.F.8(a)(1).

²⁵ Electricity Rules, cl. 4A.F.8(a)(2) and (3).

this timeframe if it is clear after reporting commences that the timeframe is not fit for purpose.²⁶

We have indicated in the Guidelines that an AER notification to AEMO under clause 4A.F.8(a) of the Electricity Rules remains valid should it be provided after 50 business days.²⁷

The *AER PoLR report* is not a public report. However, the AER must publish a list of non-compliant entities (*PoLR liable entities*) on our website within five business days of providing the *AER PoLR Report* to AEMO.²⁸

The Guidelines outline that we will advise all *liable entities* that have been issued with a notice of assessment of the outcome of our assessment prior to publishing the list on our website. Where a *liable entity* has not received a notice of assessment, the AER will contact that *liable entity* to confirm that it is not a *PoLR liable entity* for the purposes of the *AER PoLR report*.

2.3 Requirement to establish appropriate policies, systems and procedures

Each *regulated entity* must establish policies, systems and procedures to enable it to efficiently and effectively monitor its compliance with the RRO.²⁹

The AER has chosen the current relevant Australian Standard ‘AS/ISO 37301 – Compliance Management Systems’ as a benchmark to establishing the policies, systems and procedures to monitor compliance with the RRO. We consider the benefits of adopting the Standard are that it is not energy-specific and therefore adaptable for various types of businesses, and that *retailers* have already established processes under the similar ISO 19600 standard.

The Guidelines require each *liable entity* to adopt the Standard when establishing the policies, systems and procedures to monitor compliance with the RRO.

Further information on the key topics covered by the Standard, and our reasoning for adopting the Standard, can be found in the Issues Paper.³⁰

2.4 Requirement to provide data and information

The Electricity Law allows the AER to use the Guidelines to require *regulated entities* to provide the AER with information and data relating to their compliance with the RRO, and to specify the manner, form and timeframes for the provision of that information and data in the Guidelines.³¹

²⁶ If the AER decides to revisit the timeframe, it must do so in accordance with clause 4A.F.6 of the Electricity Rules.

²⁷ Electricity Rules, cl. 4A.F.8(a).

²⁸ Electricity Rules, cl. 4A.F.8(c).

²⁹ Electricity Law, s. 18ZB(1).

³⁰ See section 5 of the Issues Paper.

³¹ Electricity Law, ss. 18ZD and 18ZI(2)(a)(iii).

The Electricity Law and Electricity Rules already impose requirements on *regulated entities* to provide, or make available to the AER, information and data relating to their obligations under the RRO. Other guidelines in the RRO suite, such as the Interim Contracts and Firmness Guidelines and Opt-in Guideline, also set out information and data provision obligations.

In addition to the above requirements, the AER has decided to include in section 5.1 of the Guidelines a requirement on *liable entities* to provide information on request in relation to *NCP reports*. As discussed in section 1.2 above, the AER has consulted on this additional requirement through its inclusion in the Draft Guidelines.

2.4.1 Information to be covered by additional requirement under Guidelines

The Guidelines set out the AER may require *liable entities* to provide some or all of the following information:

- information demonstrating that contracts reported in the *NCP report* were actually held by the *liable entity* on the *contract position day*;
- how the firmness factor was determined for particular *standard qualifying contracts*;
- the process for developing and approving *bespoke firmness methodologies* and factors in relation to *non-standard qualifying contracts*, including:
 - whether (and, if so, how) the *Independent Auditor* was involved in the initial development of those methodologies and factors; and
 - any revisions or suggested revisions to these methodologies made by the *Independent Auditor*, and the reasons given by the *Independent Auditor* as to why these revisions were made.

Pursuant to section 18ZD of the Electricity Law, *liable entities* must provide this information where the AER makes a request for it. Section 18ZD is a *tier 2 civil penalty provision*.

The accurate and timely provision of information to clarify particular aspects of *NCP reports* is essential to ensuring the RRO is meeting its intended purpose of supporting reliability in the National Electricity Market. In particular, the *NCP report* constitutes a fundamental input to the AER's overall compliance assessment and AEMO's calculation of PoLR costs for a *liable entity*. Our role is to determine whether *liable entities* have met their RRO obligations and, if not, notify AEMO of their liability such that any PoLR costs can be appropriately recovered. Consumers would otherwise be liable for the costs of maintaining reliability during those periods.

We consider including the information provision requirement in the Guidelines is the most appropriate method for obtaining the information set out above as it will ensure that:

- the AER can obtain the information it may require to assess the validity of *NCP reports* in a consistent, accurate and timely manner and ultimately meet its obligations to notify *liable entities* of their *uncontracted MW position* and provide accurate and timely *AER PoLR reports*; and
- *liable entities* have an early indication of the information we may seek in relation to their *NCP reports*, which may, in turn, assist them in developing compliance systems and processes.

If needed, the AER will obtain information not specified in the Guidelines through other means such as voluntary information requests, compulsory information notices under section 28 of the Electricity Law, or *compliance audits* (depending on the circumstances). We have considered whether these information gathering tools would be appropriate for seeking the specific information outlined above. However, we consider these tools alone will not allow us to achieve the aims of obtaining the information in a consistent, accurate and timely manner or providing an early indication to *liable entities* of the information we may seek. The information provision requirement we have included in the Guidelines involves a quicker and less formal process for the AER and *liable entities* than a compulsory notice or *compliance audit*, while being more rigorous than a voluntary request.

As indicated in the Draft Decision, the AER will always seek to minimise the burden placed on those from whom information is requested.

2.4.2 Manner, form and timeframes for information provision under proposed requirement

We note that we would generally require a *liable entity* to provide information after we receive AEMO's compliance report, for the purpose of determining whether to issue a notice of non-compliance to that *liable entity* (discussed further at section 2.2.1). However, it is open to the AER to seek the information referred to in section 2.4.1 at any time after a *liable entity* submits an *NCP report*.

A *liable entity* must provide this information in writing no later than 15 business days from the day the AER requests it. We consider this timeframe balances the need for the AER to meet the timeframes for the provision of our notice of assessment to a *liable entity* with the likely time required by the *liable entity* to respond. Where an information request is less complex or more administrative in nature, the AER encourages the relevant *liable entity* to respond sooner than 15 business days after receiving the request to avoid unnecessary delays in the compliance assessment process.

A *liable entity* is able to request an extension of time to submit its response to the information request should extenuating circumstances exist. The AER will consider all the relevant circumstances when deciding whether to grant an extension, including any implications the extension would have on the compliance assessment timeframes set out in the Guidelines.

Our guidance on the above information provision requirement is set out in section 5.1 of the Guidelines. The AER may update the approach set out in the Guidelines in accordance with clause 4A.F.6 of the Electricity Rules if it becomes clear it is not fit for purpose.

2.5 Compliance audits

The Electricity Law allows the AER to carry out (or require a *regulated entity* to carry out) an audit of a *regulated entity's* activities relating to its compliance with the RRO.³²

³² Electricity Law, ss. 18ZE and 18ZF. These *compliance audits* are separate to the framework for independent audits under clause 4A.E.5 for *liable entities* using *bespoke firmness methodologies* to calculate their NCPs, as detailed in the Interim Contracts and Firmness Guidelines.

These audits have broad application and can be used to test compliance by any *regulated entity* with any obligation under Part 2A of the Electricity Law and the related provisions under the Electricity Rules, including requirements to comply with other RRO guidelines.

The most common aims of *compliance audits* will be to verify that:

- the *NCP report* is accurate via the examination of underlying material such as contracts; and/or
- the *regulated entity* has policies, systems and procedures in place to enable it to efficiently and effectively monitor its compliance with the RRO.

Under the Electricity Law, a *compliance audit* of a *regulated entity's* activities can be carried out by or on behalf of the AER, or the AER can require a *regulated entity* to carry out a *compliance audit*. The *regulated entity* may arrange for a contractor or another person to carry out the audit on its behalf, but the *regulated entity* will remain responsible for ensuring the audit is carried out in the manner required by the AER, and that the results are provided to the AER on time.³³ We will determine the appropriate approach depending on the particular circumstances.

In practice, where the AER requires a *regulated entity* to carry out a *compliance audit*, we are unlikely to agree to an audit proposal that involves a person internal to the *regulated entity* carrying out that *compliance audit*. Given the potentially significant PoLR costs flowing from RRO non-compliance, we consider it is important that the person or contractor carrying out the *compliance audit* is sufficiently independent, and able to act without bias or actual or potential conflicts of interest. It is unlikely an internal person will meet these criteria, which are detailed further in section 6.1.2 of the Guidelines.

In relation to *compliance audits* generally:

- sections 6.1.1 – 6.1.3 of the Guidelines outline the content to be contained in a written notice to a *regulated entity* advising that an audit is required, criteria for the experience and independence of auditors and requirements for *regulated entity* cooperation during the audit process; and
- section 6.1.3 of the Guidelines provides that an AER-appointed auditor or auditor appointed by a *regulated entity* may seek information about the process for developing and approving *bespoke firmness methodologies* and factors. This complements section 2.1 of the Guidelines, which outlines our expectations for these development and approval processes.³⁴

As set out in section 6.1.1 of the Guidelines, the AER will allow a *regulated entity* an opportunity to provide submissions on the Terms of Reference in the written notice, with a timeframe of at least 10 business days to provide the submissions to the AER. We value a *regulated entity's* perspective on the Terms of Reference, including in relation to the proposed timeline and expected regulatory burden of the audit. The AER may amend the

³³ Electricity Law, s. 18ZF(2).

³⁴ See section 2.1 of this document for further discussion.

Terms of Reference having regard to any matters raised in the *regulated entity's* submissions, and will notify the *regulated entity* in writing of any amendments made.

Additionally, for *compliance audits* carried out by or on behalf of the AER:

- section 6.2.1 of the Guidelines outlines that the Terms of Reference will:
 - provide a *liable entity* with the opportunity to respond to draft audit findings; and
 - require management to provide comments in response to each finding in the final audit report and detail proposed remedial actions in a documented implementation plan; and
- section 6.2.2 of the Guidelines sets out the AER's approach to cost recovery. The Guidelines adopt an approach consistent with the AER's Compliance Procedures and Guidelines developed under s. 281 of the National Energy Retail Law (AER Retail Guidelines),³⁵ relying on the obligations that govern our procurement activities as a non-corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* and Commonwealth Procurement Rules.³⁶

For *compliance audits* by a *regulated entity*, we note:

- section 6.3.1 of the Guidelines provides that, once notified by the AER that it is required to carry out a *compliance audit*, the *regulated entity* must respond with an audit proposal. Section 6.3.1:
 - sets out the required content of the audit proposal, which is similar to what the AER requires for audit proposals under the AER Retail Guidelines;³⁷
 - provides that the 20 business day timeframe for the submission of the audit proposal by a *regulated entity* will begin at the date the AER finalises the Terms of Reference;
 - details the circumstances where the AER may reject an audit proposal; and
 - specifies the options available to the AER where it rejects an audit proposal; and
- section 6.3.2 of the Guidelines states that a *regulated entity* must provide the results of a *compliance audit* within the period specified by the AER. This section specifies the required form and content of these results, and sets out that the results must be accompanied by management comments from the *regulated entity* and, if requested by the AER, a documented implementation plan.

³⁵ The AER Retail Guidelines, current at the time of the release of this document, can be viewed at <https://www.aer.gov.au/retail-markets/guidelines-reviews/compliance-procedures-and-guidelines>.

³⁶ The Commonwealth Procurement Rules can be viewed at <https://www.finance.gov.au/sites/default/files/2022-06/CPRs%20-%201%20July%202022.pdf>.

³⁷ AER Retail Guidelines, section 4.25.