



20 December 2010

Mr Tom Leuner
General Manager
Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

By email: AERInquiry@aer.gov.au

Dear Mr Leuner

AER Issues Paper – RoLR Registrations and Appointments

AGL Energy Limited (**AGL**) welcomes the opportunity to provide comments on the *Issues Paper: RoLR Registrations and Appointments* (the **Issues Paper**) published by the Australian Energy Regulator (**AER**) in December 2010.

AGL is currently a retailer of last resort (RoLR) in Victoria and New South Wales, and provides contractual support to ETSA in South Australia. AGL has been involved in both of the RoLR events in the NEM to date, the most recent of which was the transfer of customers from JackGreen International Pty Ltd in December 2009. As a consequence, AGL is well placed to provide feedback on the issues associated with RoLR events.

This submission has been prepared in parallel with AGL submissions on *RoLR plan development – Issues paper, November 2010* and *RoLR Cost Recovery Scheme – Issues paper, November 2010*.

Overall, AGL does not oppose the RoLR registration and appointment process proposed by the AER. AGL does, however, question whether such a complex scheme is warranted. RoLR events tend to occur with little or no notice and a RoLR scheme which contemplates additional RoLRs, with firm and non-firm offers, is perhaps too ambitious, given the limited time between the failed retailer's suspension and the transfer of customers to the RoLR. The AER needs to focus on what a RoLR scheme is designed to achieve – which, in our view, should be the continuity of payments between industry participants to ensure that the power stays on for end-use consumers. The introduction of competition into the RoLR scheme should not come at the expense of the overall scheme objectives.

AGL queries the AER's view that retailers stand to benefit from RoLR events because they gain customers, without actually having to expend resources on sales and marketing activities. While it may be true that a RoLR will increase its market share due to a RoLR event, it should be recognised that it does so at a cost.¹ The AER's premise that there will be competition amongst retailers to be appointed RoLR, will effectively test this theory. Certainly, the lack of retailer interest in South Australia (**SA**) when ETSA put out a request

¹ Cost recovery is not discussed in this submission, but is instead the subject of a separate submission to the AER in response to its Issues Paper on the proposed RoLR cost recovery scheme.

- > Being selected as a member of the Dow Jones Sustainability Index 2006/07
- > Gaining accreditation under the National GreenPower Accreditation Program for AGL Green Energy®, AGL Green Living® and AGL Green Spirit
- > Being selected as a constituent of the FTSE4Good Index Series



for tender for retailers to provide administrative support in a RoLR event, suggests perhaps, that retailers do not necessarily share the AER's view that this is a good way to increase their customer numbers. This view is also supported by the fact that no retailers were interested in taking up the opportunity of a trade sale prior to the failure of Jackgreen.

Given that it appears that the NECF will not be adopted by any jurisdiction until mid-2012, the AER has sufficient time to develop an efficient and effective RoLR scheme. AGL encourages the AER to meet with those retailers who have been involved in the recent RoLR events, to get a full understanding of how events unfolded from a retailer perspective. This knowledge should then inform the development of the national RoLR scheme. To this end, AGL would be pleased to meet with representatives of the AER in the coming months.

AGL's response to specific questions raised in the Issues Paper is provided in Attachment A.

Should you require clarification of any of the points raised in this submission, please contact Anna Stewart, Manager Regulatory Policy and Strategy, on 03 8633 6830.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alex Cruickshank', is positioned above the typed name.

**Alex Cruickshank,
Head of Energy Regulation**

1. Are the objectives of the RoLR scheme, as identified in the Issues Paper, appropriate?

AGL supports the objectives identified in the Issues Paper. It is imperative that the RoLR scheme ensure the integrity of the energy market by maintaining the continuity of payments between industry participants – without which, supply to end use customers cannot be guaranteed.

2. RoLR registration criteria

Section 3.2 of the Issues Paper refers to the practice of wholesale market settlement by difference and concludes that this “precludes the appointment of more than one gas RoLR per distribution network”. AGL queries whether this is correct, given that distribution networks do currently cope with a multiplicity of retailers, even where market settlement is by difference.

The acceptance of this constraint is unfortunate in that it prevents the implementation of the innovative RoLR solution contemplated by the AER in the form of “additional RoLRs”. Where there is a regime of global settlement and if the market operator were to have access to data relating to 100 percent of MIRNs, it would be easier to consider the existence of more than one RoLR.

AGL does not therefore consider that the default RoLR model is the only model that can exist in relation to gas.

3. Registration of default RoLRs

The AER’s aim to introduce an element of competition into the RoLR framework must not come at the expense of a rigorous and robust appointment process.

AGL generally supports the RoLR appointment criteria suggested by the AER. There is no sense in appointing a retailer that does not have the organisational, technical and financial capacity, to take on the responsibilities required of a RoLR. In AGL’s view, the financial resources of the potential RoLR should be the most important consideration, given that a subsequent retailer failure would cause further instability in the market. Having said this, organisational and technical capacity is also critically important, given that there will be a large amount of customer data requiring processing, as well as additional customer billing and communications. As is noted in the Issues Paper, a potential RoLR will need to have IT systems and processes in place to manage RoLR responsibilities at short notice.

AGL does, however, have some concerns regarding the comments on the suitability criteria as they relate specifically to gas.

Section 137 of the National Energy Retail Law makes provision for the AER to give certain directions in its RoLR notice “if there is no declared wholesale gas market or short term trading market”. There is also provision in subsection 5 of section 137 for the AER to compel distributors, transmission pipelines and producers to offer services and commodity on the same terms and conditions as were in force with the failed retailer. The underlying assumption of this statutory framework is that the presence of a wholesale gas market, be it a declared wholesale gas market or a short term trading market, will somehow ensure that gas haulage services and commodity will be made available to the RoLR.

The problem with Gas Supply Agreements (**GSA**) and Gas Transmission Agreements(**GTA**) is that they generally have a clause where, in the event of insolvency, the producer and service provider can terminate the contract. This means that the gas is available to be reallocated by the producer and the released haulage can be offered in by the pipeliner.

However, if a RoLR event should happen by another route (loss of licence, failure to meet margin call by the market operator, or the retailer not wanting to retail any longer, as in the Energy One scenario), the GSA with the producer and the GTA with the pipeliner are still in force. Under those circumstances, the commodity or haulage may only be offered on a non-firm basis, which means that the price will be higher than if the basis of offering were firm.

Where a RoLR event of the non-insolvency variety may have been triggered by price pressures in the wholesale market, the NERL as drafted will not offer much protection to RoLRs who operate in the declared wholesale gas market or in the STTM.

4. Registration of default RoLRs

AGL generally supports the proposed expression of interest (**EOI**) process, for both default and additional RoLRs. We have no strong view on how frequently EOIs for default RoLRs should be sought, however, every three years is an acceptable suggestion. Default RoLR arrangements should also be reviewed in the event of a merger or acquisition, withdrawal of a retailer from the market or a significant change in the default RoLR's organisational structure and/or financial position.

In relation to the areas of registration, AGL suggests that default electricity RoLRs should be registered against connection points grouped by local retailer area. This is currently the practice in the majority of jurisdictions and for reasons of simplicity it would be preferable to retain this practice. Rather than a jurisdictional approach being taken as to how to group connection points, AGL would prefer a nationally consistent approach.

AGL does not oppose the suggestion in the Issues Paper that the current jurisdictional RoLRs be registered as default RoLRs in those jurisdictions which are first to adopt the NECF. However, it appears that the MCE is working towards a single transition date in July 2012, in which case it may be possible for the AER to call for EOIs prior to transition. In any event, default RoLRs should only be appointed for a short period of time, say 6 months from the time that all of the relevant jurisdictions have transitioned to the NECF.

5. Registration of additional RoLRs

AGL can understand the policy rationale behind the idea of having additional RoLRs, however we are sceptical that it will work in practice. AGL finds it difficult to envisage a situation where the AER will have sufficient time to enable it to appoint additional RoLRs, particularly when there is further complexity in the form of 'firm' and 'non-firm' offers. This aspect of the scheme would necessitate a higher level of involvement from scheme participants and the AER, which is arguably unjustified given that RoLR events are so infrequent.

6. Back up RoLR arrangements

The back up arrangements in Victoria for default RoLR failure works because there are three former franchise retailers who are able to share the load in the event one fails. As the Issues Paper notes, this is not the situation in some jurisdictions, such as SA. Accordingly, AGL does not consider the Victorian model is necessarily the most appropriate template to use in the other jurisdictions.

If the AER wishes to pursue a nationally consistent approach to this situation (which is extremely unlikely to occur in any event), it may be more appropriate to use the SA model as the template. In this scenario, distributors could contract out RoLR services to willing retailers.