
AEMO Submission Retailer authorisation guideline

In March 2010, the Australian Energy Regulator commenced preliminary consultation on the Draft Retailer Authorisation guidelines paper and related Issues paper. AEMO welcomes the opportunity to make a submission to assist the AER with the ongoing development of retailer authorisation guidelines.

Comments are provided below on both documents as well as AEMO's response to the AER's Questions for Consideration in Attachment A.

1 AER Issues Paper – Retailer Authorisation Guideline

Page 1: Section Introduction: paragraph 3 states:

“It is currently understood that the AER will not undertake this role in Western Australia, the retail electricity market in the Northern Territory and some retail gas markets.”

To avoid any doubt, AEMO recommends clarification of which retail gas markets the AER will and will not be regulating.

Page 5: Section 4 Entry criteria and information requirements: paragraph 1

Entry criteria and information requirements of the issues paper states:

“To ensure rigour in the authorisation process, the draft guideline requires applicants to provide comprehensive information addressing each criterion. The AER will not commence assessing an application until all information has been provided. The AER may also request further information during the process.”

This raises two issues of a process nature:

- How will the AER know if an application is incomplete without commencing its assessment?
- If at any stage the AER “requests further information during the process”, does this mean the application is placed on hold pending receipt of the further information?

Page 8: Section 5.1 Dormant authorisations

AEMO is supportive of the AER's proposal that a dormant authorisation is required to comply with all the obligations of a retailer, including all information, reporting and is subject to targeted compliance assessment as part of the AER's compliance monitoring role.

Page 8 Section 5.2 Transfer authorisations

Similar to a RoLR scenario, AEMO would prefer to be consulted when the AER is notified of a request to transfer an authorisation, in order to take steps to prepare for any transfer of NMI / MIRNs or DPLs in the relevant market and to meet any timing requests.

Page 8: Section 5.3 Surrender of authorisations

AEMO suggests further clarity be provided regarding the ability for retailers to surrender an authorisation. For example, is this the process for scenarios where a trade sale occurs? Will the AER impose conditions and what will those conditions include (e.g. timing and

assignment of costs) as part of any surrender? How will the AER determine who customers transfer to?

In this scenario it is desirable that the AER involve AEMO early in the process to ensure that steps in preparing the transfer of NMI / MIRNs or DPs in the relevant market is arranged and meets any timing requests.

2 AER Retailer Authorisation Guideline – Draft for preliminary consultation

Page 2: Section: Exemptions: paragraph 1

AER Draft Guideline states:

“Exemptions can be granted by the AER on an individual basis or can be deemed to apply on the basis of a class of persons. Exemptions may also be issued by jurisdictions.”

To avoid any doubt, AEMO believes it is necessary to clarify in which instances jurisdictions will be able to grant exemptions. Additionally, noting that the draft exemption selling guideline has not been released yet, the AER should apply rigour in specifying instances where the AER or jurisdictions grant exemptions.

Page 4: Section: Registration with the Australian Energy Market Operator

You may apply to us for a retailer authorisation before you apply for registration with the Australian Energy Market Operator (AEMO) or before such registration is completed. You are prohibited, however, from selling energy to customers unless you are registered with AEMO. We may exchange views, documents, data and information with AEMO when assessing your application/s.

AEMO's supports the position:

1. A pre-condition to AEMO registration be that a retailer authorisation must be granted by the AER first. (AEMO notes that although the application processes can occur concurrently, a prerequisite to registration as a retailer with AEMO will be authorisation granted by the AER)
2. A prospective retailer not be able to sell energy to consumers on the basis of having been registered with AEMO and not the AER. (The consequence if the AER refuses authorisation – under this scenario means the potential trigger to a RoLR event)

Page 5: Section: Conditions: paragraph 1

AEMO recognises the AER's right to impose conditions on retail authorisations. However the guidelines should clarify the types of conditions that may be applied.

AEMO recommends further detail be included clarifying on the types of conditions the AER may impose to a prospective authorisation.

Page 6: Section: Grounds for refusal: Dot point 5 States:

“If you respond to the notice accepting the conditions, but after a period of three months you have not shown that the conditions have been satisfied, then your application is deemed to be refused”.

Where a retailer is allowed to register with AEMO, participates in the market and enters into contract with customers and the AER revokes a conditional authorisation after a period of

time, AEMO is concerned this process may result in a RoLR event. AEMO believes that scenarios that may lead to RoLR need to be avoided.

Page 7: Section: Entity to seek Retailer Authorisation: paragraph 1 States:

“it is not possible to contract out the entirety of your function of selling energy to customers”.

AEMO is unclear about what is meant by “entirety of your function”? Does this refer to all retail related activities or specific set of business processes or functions?

AEMO suggests wording that reflects the idea that prospective applicants cannot contract away their obligations under the Law, Rules and Procedures.

Page 7 & 8 Section: Information requirements—general particulars

Under “Information requirements”, AEMO suggests the combining of general particulars in items 6 and 9 to read:

The form(s) of energy for which the retailer authorisation is sought and jurisdiction(s) in which market you intend to retail energy (in each jurisdiction).

Page 10: Section 2.1 Organisational and technical capacity criterion: paragraph 7

The draft guideline states:

“if you have gained registration with AEMO prior to receiving a retailer authorisation, we will take this into consideration in assessing your organisational and technical capacity”.

Retailers will not gain registration with AEMO in a market until they have satisfied the AER and gained authorisation to commence retailing in that market.

Page 10: Section 2.1 Organisational and technical capacity criterion: paragraph 9

The draft guidelines states:

“we may grant a retailer authorisation on the condition that you pay part or all of the costs of the RoLR event”

AEMO recommends clarifying;

- What is meant by all costs?
- Do these include the new retailers, distributors, AER’s and AEMO’s costs?
- How these costs will be determined?
- How payments will be handled and distributed?

Page 10: Section: Information requirements – organisational and technical capacity

Item 20 of the draft guideline reads: *“If applicable, you should provide evidence of your prudential arrangements in the wholesale gas or electricity markets, particularly details of your registration with AEMO.”*

AEMO propose the following:

“If applicable, you must provide evidence of your prudential arrangements in the wholesale gas or electricity markets, particularly details of your registration with AEMO.”

Page 22: Section: Revocation Process

In the section relating to ‘Grounds for revocation’, AEMO would like to remove any ambiguity. In a previous submission made by AEMO as part of the National Energy Customer Framework consultation, AEMO recommended further clarification regarding whether an authorisation is granted to a retailer in multiple markets and fuels. The concern for AEMO is

that there may be an instance where a RoLR event occurs in a particular market for gas and authorisation of the failed retailer is revoked although they operate in other markets without restriction.

If the authorisation is across multiple markets, will it repeal the right for that retailer to sell gas to end-users that are not in the affected market?

(Previous AEMO NECF submission on Retailer authorisations)

AEMO would like to raise previous comments raised during the NECF consultation regarding the introduction of retailer authorisations to replace jurisdictional licenses: AEMO understands that these provisions allow an authorisation to be granted across multiple markets and fuels. AEMO is concerned that the provisions are not clear about whether an authorisation granted across multiple markets and fuels may be revoked or surrendered for some of the markets or one of the fuels while the remaining parts stay in force.

AEMO considers that these provisions should be clarified to allow an authorisation to be partially surrendered or revoked while remaining in place for other markets or fuels.)

In order to prepare for a decision by the AER to revoke an authorisation, notification of the intended issuing of a revocation notice to a retailer would also be made known to AEMO in advance.

Page 24: Section: Surrender

AEMO recommends the guidelines provide more prescriptive information that must be included in the surrendering of an authorisation, for example timing of customer transfers. AEMO believes that a decision regarding the surrendering of licences and the transfer of customers should occur on a particular date (utilising mainly estimated reads). AEMO would also like to note that in developing the guidelines regarding the process of surrendering an authorisation, it must not be overly onerous as the AER needs to ensure that retailers will prefer to use the method of surrendering an authorisation as opposed to becoming a failed retailer and commencing the RoLR process.

Additional Items for consideration

Some jurisdictions currently have different types of authorisations, linking to the local retailer (who has the obligation to supply). AEMO recommends consideration of current jurisdictional models where multiple types of authorisations are available.

RETAILER AUTHORISATION ISSUE PAPER QUESTIONS FOR CONSIDERATION	AEMO RESPONSE
<p>3.1 Would prospective applicants benefit from briefings prior to the submission of an application? If so, please provide details of the form (for example, group or individual sessions) and content of briefings that would be most beneficial for prospective applicants.</p>	<p>Question 3.1</p> <p>AEMO supports the process of providing briefing sessions for prospective applicants. AEMO believes this will aid the prospective applicants in:</p> <ul style="list-style-type: none"> • the AER role in retail markets (Gas or NEM): • clarify areas the AER’s retailer authorisation includes/excludes: and • the development of their applications in support of their obligations.
<p>4.1 Is it appropriate for the AER to require only a compliance strategy rather than a compliance plan or systems at the time of the application? Please provide any reasons for your view.</p>	<p>Question 4.1</p> <p>AEMO believes the authorisation process should be flexible so prospective retailers have the option of what compliance information they provide the AER in their application. In certain circumstances, it is appropriate to require a compliance strategy. For example, if a prospective applicant is not active in any market, then a compliance strategy will allow the AER to gauge how the prospective applicant intends to perform. Or, if application is made by a retailer that is already participating in another market, they may be able to provide a strategy for the new market or existing compliance plans for a current market which they intend using for the new market they wish to enter.</p>
<p>5.1 Is it appropriate to target retailers who wish to begin or resume retailing after a period of dormancy for compliance audits or monitoring? Please provide any reasons for your view.</p> <p>5.2 What matters should the AER have regard to, other than the rights of customers, when imposing conditions on the transfer, surrender</p>	<p>Question 5.1</p> <p>AEMO supports the compliance auditing for retailers that wish to begin or resume retailing. If the AER approved a retail authorisation, then AEMO would expect the retailer be able to be compliant with the Rules/Procedures and remain financially stable enough to provide retail services.</p> <p>Question 5.2</p> <p>AEMO believes the AER should give consideration to the timing, flow on impact to the market(s), (in particular, whether customer transfers are achieved on actual or estimated</p>

RETAILER AUTHORISATION ISSUE PAPER QUESTIONS FOR CONSIDERATION	AEMO RESPONSE
or revocation of a retailer authorisation?	reads), and potential implications for a RoLR event to be triggered when imposing conditions on the transfer, surrender or revocation of retailer authorisations. Further there will be costs generated within the market to facilitate the surrender of an authorisation where the holder is currently responsible for the energy supply to customers. Consideration should be given to how these costs are identified and defrayed, particularly as the party surrendering the authorisation is potentially a major beneficiary.
<p>5.3 What issues may arise, if any, in requiring the holder of the retailer authorisation to demonstrate that customers will remain on the same or better terms following a transfer or surrender of the retailer authorisation?</p>	<p>Question 5.3</p> <p>AEMO is concerned that, if not designed appropriately, these arrangements could conceivably contribute to a potential retail business failure. AEMO believes the AER would need to ensure the retailer accepting customers after a revocation has adequate capacity to ensure it's able to offer customers the same or better terms and conditions. Questions that may arise include: will the new retailer take over the wholesale exposures following the revocation or surrender of retailer authorisation? Will the AER allow the transfer of customers on an estimate read?</p> <p>The provisions relating to a revocation of an authorisation should be well integrated with the relevant RoLR provisions applicable in the impacted market(s). In the case that a RoLR is triggered by an authorisation revocation, AEMO is directly involved in the processes to facilitate the management of customer transfers and the data flows to support the management of the end customer. Therefore, AEMO should be appraised of AER deliberations that lead up to the revocation as AEMO needs to ensure that the steps in preparing any transfer of NMI / MIRNs / DPs in the relevant market are arranged and are possible to meet any timing requests.</p>
<p>5.4 Is it appropriate for the AER to require applicants to develop procedures for customers to take action against them following the revocation or surrender of</p>	<p>Question 5.4</p> <p>Customers transferred to the RoLR will probably be exposed to different contractual arrangements as a result of the transfer. AEMO considers that it is important for customers to be fully informed of the new arrangements at the earliest possible time so</p>

Attachment A



RETAILER AUTHORISATION ISSUE PAPER QUESTIONS FOR CONSIDERATION	AEMO RESPONSE
the retailer authorisation? If not, what other protections for customers are / could be provided?	<p>that they have an opportunity to consider their new position and consider changing their contractual arrangements or supplier.</p> <p>AEMO notes the inclusion of the proposed NERL Clause 652 which covers this matter for small customers by requiring the retailer to disclose the RoLR arrangements when entering into a contract. AEMO believes consideration should be given to obliging retailers to advise all customers of implications that apply to them in the interests of avoiding later surprises or risks.</p>