



Notice of draft instrument: Amendments to Retailer of Last Resort plan

June 2015

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Shortened forms

Shortened form	Long form
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules
RoLR	Retailer of Last Resort

Nature and authority

Introduction

This Notice of draft instrument and the accompanying consultation draft present proposed amendments to version 3 of the Australian Energy Regulator's Retailer of Last Resort plan.

The consultation draft proposes changes that:

- improve the plan based on a review of outcomes from RoLR exercises, and subsequent discussions with industry participants
- account for Queensland specific requirements in its adoption legislation for the National Energy Customer Framework, due to commence on 1 July 2015
- clarify the obligations on RoLR participants and simplify the structure of the plan.

The nature and purpose of the proposed amendments, and their possible effects, are explained in this notice.

Authority

The National Energy Retail Law (Retail Law) allows us to make and amend the AER's Retailer of Last Resort plan in accordance with the retail consultation procedure.

Role and purpose of the RoLR plan

Electricity and gas retailers operate in competitive markets. In this environment, it is possible that some gas and electricity retailers will fail. The AER works with other market participants to ensure customers of a failed retailer are protected.

Under the Retail Law, the RoLR scheme establishes arrangements to transfer the customers of a failed retailer to another retailer, so that continuity of supply is maintained. The AER is responsible for administering several aspects of the national RoLR scheme, including developing, making and maintaining RoLR plans.

The RoLR plan sets out the procedures to be followed by market participants in a RoLR event, including communication with the customers of the failed retailer. The plan also establishes the scope and frequency of RoLR scheme test exercises to be carried out by RoLR plan participants. These exercises are designed to test the systems and processes of RoLR plan participants for managing a RoLR event.

Definitions and interpretation

In this Notice, key words and phrases have the meaning given to them in:

- the shortened forms or
- if not defined in the shortened forms, the Retail Law and National Energy Retail Rules (Retail Rules).

Version history and effective date

This notice of draft instrument has been prepared for consultation purposes only.

The current version of the guideline is version 3 (August 2012).

How to make submissions

This notice and the accompanying consultation draft of the RoLR plan have been prepared in accordance with the retail consultation procedure set out in rule 173 of the Retail Rules.

Interested parties are invited to make written submissions on the draft guideline by close of business, **17 July 2015**. Late submissions may not be taken into account.

Submissions should be sent electronically to: aer inquiry@aer.gov.au and should be in Microsoft Word or other text readable document form.

Alternatively, submissions can be sent to:

General Manager—Wholesale Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Submissions provided by email do not need to be provided separately by mail.

PLEASE NOTE:

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will therefore be treated as public documents unless otherwise requested, and will be placed on the AER's website (www.aer.gov.au). Parties wishing to submit confidential information are asked to:

- clearly identify the information that is subject of the confidentiality claim
- provide a non-confidential version of the submission for publication, in addition to the confidential one.

The AER does not generally accept blanket claims for confidentiality over the entirety of the information provided. Such claims should not be made unless all information is truly regarded as confidential. The identified information should genuinely be of a confidential nature and not otherwise publicly available.

In addition to this, parties must identify the specific documents or relevant parts of those documents which contain confidential information. The AER does not accept documents or parts of documents which are redacted or 'blacked out'.

For further information regarding the AER's use and disclosure of information provided to it, please refer to the ACCC–AER information policy: the collection, use and disclosure of information, which is available on the AER website under 'Publications'.

Please direct enquiries about this notice and the draft plan, or about lodging a submission, to the Wholesale Markets Branch of the AER through aer inquiry@aer.gov.au.

Proposed amendments

Our proposed amendments to the RoLR plan are summarised below. These amendments are included in the consultation draft plan which is also available on our website at www.aer.gov.au.

The consultation draft proposes changes that:

- improve the plan based on a review of outcomes from RoLR exercises, and subsequent discussions with industry participants
- account for Queensland specific requirements in its adoption legislation for the National Energy Customer Framework, due to commence on 1 July 2015
- clarify the obligations on RoLR participants and simplify the structure of the plan.

General amendments

The text throughout the RoLR plan has been amended to clarify the obligations on RoLR participants. Changes have also been made to simplify the structure of the document, remove unnecessary content (including all templates) and update content to reflect current market arrangements. Unless explicitly referred to within this consultation notice, these changes are not intended to alter the obligations of RoLR participants.

The RoLR plan is required, under s. 162(3) of the Retail Law, to be consistent with AEMO's RoLR procedures on the operation or implementation of the RoLR scheme. A new provision has been included in the RoLR plan to clarify that where there is an inconsistency between these documents, the RoLR procedures take precedence. The AER and AEMO work closely on changes to both the RoLR plan and procedures to ensure consistency. However, the requirements on consultation for changes in the RoLR plan may result in some inconsistency for a period of time.

RoLR contacts

The requirement for RoLR contact information to be provided to the AER has been expanded to all RoLR participants. Under the current version of the RoLR plan, retailers other than registered RoLRs were not required to provide this information. A RoLR event may impact, and impose obligations on, all retailers (for example, the requirement to provide information to customers affected by a cancelled transfer). Contact information for all retailers will allow for timely notification of a RoLR event so that the businesses can prepare to meet these obligations.

The RoLR plan has also been amended so that retailers and distributors must maintain up to date RoLR contact details on AEMO's *Retail operations contact list*, in addition to the contact details provided to the AER. Participants may nominate different RoLR contacts for AEMO and the AER.

The obligation on the AER to publish a public version of the RoLR contacts list, and to regularly circulate the list to RoLR participants, has been removed from the RoLR plan. The primary use of the list is for the AER to promptly inform businesses of a RoLR event and of upcoming RoLR exercises. Contacts provided through AEMO's Retail operations contact list

should be sufficient for business-to-business communication relating to a RoLR event. However, the RoLR plan provides that the AER may disseminate retailers' and distributors' RoLR contact information to relevant market participants before or during a RoLR event if considered necessary.

Changes to obligations on RoLR participants

Australian Energy Regulator

The requirements for appointment of an additional RoLR have been amended to allow the AER more time to notify AEMO in some circumstances. The change provides that where a RoLR event will be triggered by AEMO suspending the retailer from a wholesale market or revoking its registration, notification of an additional RoLR appointment can occur at any time prior to the suspension or revocation taking effect. The current RoLR plan requires notification from the AER by the time given for the retailer to respond to a call notice or margin call, or before AEMO issues a default notice. Based on RoLR exercises, AEMO considers the revised timing will allow it sufficient time to prepare to effect the transfer of customers.

The list of recipients of the RoLR notice issued by the AER has been extended to include 'any service provider for a gas transmission pipeline, gas producer or other person subject to directions for gas under s. 137 of the Retail Law'. As these businesses may be obligated to act during a RoLR event, prompt provision of the RoLR notice will allow for faster resolution of any gas supply and capacity issues affecting the designated RoLR(s).

The current RoLR plan provides that the AER must give the RoLR notice by email to all parties other than the failed retailer (or the insolvency official of the failed retailer), and send a text message to alert the parties that the notice has been provided. The requirement to send the supporting text message has been removed from the consultation draft. With access to email available on mobile devices, the text message is largely redundant for ensuring timely notification of the RoLR event. The AER will instead limit additional communication to confirm receipt of the notice where it has otherwise received no indication that the RoLR notice has been received.

The requirement for the AER to publish the RoLR notice on its website 'within 24 hours of the RoLR event' has been amended to 'within 24 hours of the AER becoming aware of the RoLR event'. The AER will in most circumstances have some warning that a RoLR event is likely, particularly when the RoLR event is triggered by market suspension of the failed retailer. In these circumstances, publication of the notice will still be required within 24 hours of the RoLR event. However, some RoLR event triggers such as the appointment of an insolvency official can occur without any prior notification to the AER. This change will allow the AER sufficient time to prepare and publish the RoLR notice in all circumstances.

The list of parties who will receive email notification within 24 hours of the AER becoming aware of a RoLR event has been amended. The current plan requires the AER to notify consumer intermediaries, which may include members of parliament, financial counselling services and migrant resource centres. The consultation draft retains the obligation, but removes the examples of consumer intermediaries provided. In practice, the AER will likely look to contact those intermediaries that it has readily available contact details for, including members of the AER's various consumer panels and groups. The notification requirement

has also been extended to all retailers (subject to their provision of up-to-date contact details), to ensure they are aware that they may need to act in relation to any cancelled customer transfers.

The requirement on the AER to provide the RoLR event report to the Ministerial Council on Energy (now the Council of Australian Governments Energy Council) 'within 80 days of the RoLR event' has been amended to 'within 80 days of the transfer date for customers of the failed retailer'. This change is required to bring the requirement in line with the Retail Law.

A new requirement has been added that the AER publish a report on any RoLR exercise on its website, within 20 business days of the exercise date. The AER is required under the Retail Law to publish reports on RoLR exercises. The timing reflects the AER's current practice.

Australian Energy Market Operator

AEMO is required to notify the AER of actions it has taken that could result in a RoLR event. One circumstance is when it is seeking to suspend a retailer from a wholesale market. The consultation draft brings forward the timing of the notification to the AER in these circumstances from the time of suspension to the time the suspension notice is issued. This change will provide the AER additional time to prepare for the RoLR event.

The current RoLR plan requires AEMO to provide the AER with reports on connection numbers and load following the issue of a call notice or margin call (or default notice in the event a call notice or margin call was not issued). Amendments to the plan delay the mandatory provision of these reports until a retailer fails to meet a call notice or margin call, but provides discretion for AEMO to provide these reports earlier if it or the AER forms a belief that there is a risk of a RoLR event.

The RoLR plan requires AEMO to notify the AER, via email, when customer transfers for the RoLR event have been initiated in their metering and settlement systems. The consultation draft adds a timing requirement that the notification must occur within two hours of the transfers commencing. This addition clarifies the AER's expectations in respect of notification.

Designated retailers

The RoLR plan requires a designated RoLR to notify the AER when it has received details of the failed retailer's customers. The consultation draft adds a timing requirement that the notification must occur within one business day of receipt of the information. This addition clarifies the AER's expectations in respect of notification.

The consultation draft adds a new obligation on designated RoLRs for a gas RoLR event. Under the new obligation, a designated RoLR must notify the AER as soon as it becomes aware that the gas supply or capacity available to it may be insufficient to service the customers of the failed retailer. Timely notification of insufficient gas availability is important for the AER to effectively use its gas directions powers under s. 137 of the Retail Law.

Failed retailer (or an insolvency official of the failed retailer)

The consultation draft adds an obligation on the failed retailer (or an insolvency official of the failed retailer) to notify the AER as soon as practicable following a RoLR event. This

requirement will help the AER to quickly establish processes with the failed retailer to manage the RoLR event and will help ensure the timely provision of information from the failed retailer to its former customers, designated RoLRs and ombudsman schemes.

The current RoLR plan requires a failed retailer to notify the AER when it has met its obligations to provide information to designated RoLRs and its former customers. The consultation draft adds a timing requirement to this obligation, with the notification to occur within one business day of the information being provided. This addition clarifies the AER's expectations in respect of notification.

Distributors

The current RoLR plan requires a failed retailer to notify the AER when it has provided details of the failed retailer's customers to the designated RoLR(s). The consultation draft adds a timing requirement to this obligation, with the notification to be provided by within one business day of the details being provided to the designated RoLR(s). This addition clarifies the AER's expectations in respect of notification.

Queensland specific obligations

Some customers connected to Queensland's Ergon Energy distribution network have card-operated meters installed. The Queensland legislation to adopt the Retail Law includes specific requirements in relation to these meters in a RoLR event, including that:

- the failed retailer is to provide information to customers with card-operated meters on how credits on cards used with the meters will be refunded
- the designated RoLR is to send written information to customers of the failed retailer with card-operated meters on implications for credits on cards used with the meters.

The consultation draft includes changes to give effect to these requirements.

RoLR exercises

The consultation draft adds clarity around the likely frequency of RoLR exercises. It provides that the AER will aim to conduct a RoLR exercise every 12–18 months, subject to the occurrence of any RoLR events. Flexibility in the timing of RoLR exercises is important to avoid unnecessary work for RoLR participants. For example, should there be an actual RoLR event, this would reduce the need for a RoLR exercise for a period of time.