We are working to improve how retailer failures are managed

The Australian Energy Market Commission (AEMC or Commission) has published a directions paper explaining the areas for further work. We seek stakeholder submissions on the issues we are further considering by 22 June 2023.

We have identified feasible policy options for further stakeholder feedback

Market participants and regulatory agencies gained valuable experience in managing retailer failures during the stressed market conditions in 2022. Using this experience, the Australian Energy Market Commission (AEMC) has completed our stage one feasibility study. Our assessment was also informed by 12 stakeholder submissions, discussions with market and government bodies, and further analysis of potential options.

This directions paper seeks stakeholder feedback on the options we are considering in stage two to improve how gas and electricity retailer failures are managed. Stakeholder submissions must be lodged with the Commission by **22 June 2023**.

We are considering options to reduce the costs of electricity retailer failures

While the electricity Retailer of Last Resort (RoLR) scheme facilitates the orderly transfer of customers to the designated RoLR, it has no process to manage the sudden increase in costs incurred by the RoLR from servicing new customers. Therefore, we are exploring two measures to reduce the costs of an electricity RoLR event:

- **Improvements to the RoLR cost recovery scheme**. The intention is to clarify the wholesale and hedging costs that can be claimed by the designated RoLR that relate to the newly transferred customers.
- **Introducing a mechanism to bill the failed retailer for the costs of its failure.** The intention of this option is that the failed retailer would pay for the costs of its failure, and therefore reduce the costs paid by customers through the RoLR cost recovery scheme.

We are not considering an electricity directions framework or a matchmaking service.

We are considering improvements to manage gas retailer failures

The gas RoLR scheme includes a mechanism that allows the Australian Energy Regulator (AER) to direct the failed retailer's gas or pipeline capacity to the designated RoLR. This process reduces the potential risks and costs of gas retailer failures. We are considering the following improvements:

- **Making the directions framework fit for purpose.** Extending the length of time a direction can apply for, broadening the scope of contracts that can be directed, improving the negotiation processes between directed parties, and clarifying the circumstances under which directions can be issued.
- **Clarifying the information the RoLR should receive and benefits that should be passed on to customers**. Providing the RoLR with better information about its new customers, providing greater clarity over RoLR cost recovery process and requiring the RoLR to pass through any benefits it receives from the directions process to consumers.

We are considering observed retailer behaviour in volatile conditions outside this review

In mid-2022, we also observed some retailers allegedly selling their hedges for a profit after actively encouraging their customers to move to other retailers. The observed

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behaviour has potential consumer harms in the form of financial impacts and erosion of trust in the sector.

Our analysis showed that the financial impacts are largely addressed by existing arrangements. However, we consider two additional retail pricing enhancements could further reduce the likelihood of harm. These include providing more information to customers when retailers change prices and allow the AER to update the Default Market Offer outside the normal schedule in response to significant market events.

In relation to the potential erosion of trust, given the behaviour has not been widespread to date, we do not consider it warrants a regulatory response. We will continue to work with the AER and Australian Competition and Consumer Commission (ACCC), who monitor the market, to see if other instances of pertinent behaviour emerge.

If more instances of this behaviour were to emerge, its unlikely the Commission would consider regulating how retailers buy and sell contracts to be an appropriate response.

Process for the Review

In October 2022, we self-initiated this review seeking to improve the RoLR arrangements. We have completed our stage one feasibility study and refined options for further work. The process for publishing our draft report is as follows:

- **11 May 2023**: publish directions paper outlining the feasible policy options for feedback
- **22 June 2023**: submissions close
- **Late-2023**: publish draft report with draft recommendations.

The RoLR scheme is predominantly held in the National Energy Retailer Law (NERL). Therefore, any recommendations from this review will need to be endorsed and implemented by Energy Ministers through a package of law changes.

Energy is an essential service and requires well-functioning retailer exit arrangements

The RoLR scheme is an important mechanism to ensure the continued supply of an essential service to customers in the event of a retailer failure. While the RoLR scheme facilitates a timely transfer of customers to a new retailer it can result in risks and costs for customers and remaining retailers. While the failed retailer's customers are transferred to the designated RolR, the failed retailer contracts that managed their wholesale price risks are not. If retailer failure occurs in volatile market conditions with high wholesale prices, the designated RoLR may face financial stress from being exposed to these volatile prices. There may also be a risk of a gas designated RoLR being unable to obtain gas.

There are different arrangements in electricity and gas to manage this risk:

- In gas, the RoLR scheme has a directions framework that allows the designated RoLR to access the physical gas supply and pipeline capacity contracts previously held by the failed retailer. This provides the designated RoLR with the physical gas it needs to support the transferred customers on the same terms and conditions that were available to the failed retailer for the period of the direction.
- In electricity, where electricity is purchased through the NEM, there is no need for directions to make sure the designated RoLR can supply the transferred customers. The designated RoLR purchases electricity through the NEM and manages its cost risk for supplying the transferred customers via hedging contracts.

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