INFORMATION

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Review into the arrangements for failed retailers' electricity and gas contracts

The Commission has published a final report on the Review into the arrangements for failed retailers' electricity and gas contracts

Regulatory agencies, market participants and governments gained valuable insights into managing energy retailer failures in the 2022 energy crisis. Using these insights, the Australian Energy Market Commission (the AEMC or Commission) has published a Final Report for the Review into the arrangements for failed retailers' electricity and gas contracts. The final report makes 10 final recommendations to improve the Retailer of Last Resort (RoLR) scheme.

Our final recommendations have been shaped by three formal rounds of stakeholder feedback in response to the consultation paper, directions paper, and draft report. Bilateral stakeholder engagement has also been instrumental in shaping the Review recommendations. The Commission thanks stakeholders for their constructive and collaborative engagement throughout the Review process.

Our recommendations would simplify and improve the gas directions framework

The Commission has made six recommendations (**recommendations 1 - 6**) to simplify and improve the RoLR gas directions framework, which would increase certainty for market participants and decrease administrative burden on the Australian Energy Regulator (AER). Our recommendations would also reduce systemic risks in the market by reducing the financial strain on RoLRs in the event of a series of retailer failures, or a large retailer failure.

These six recommendations have the following key benefits:

- expanding the gas directions trigger would better protect designated RoLRs by ensuring that they have access to important contracts held by the failed retailer (**recommendation 1**)
- expanding the gas directions period would give designated RoLRs sufficient time to negotiate long-term contract coverage (**recommendation 2**)
- removing the mandatory negotiations and auctions processes would simplify arrangements and reduce risks for gas producers (**recommendation 3**)
- clarifying arrangements for contracts due to end or commence during the directions period would increase certainty for relevant parties (**recommendation 4**)
- expanding the scope of gas directions to include gas held in storage would help ensure that designated RoLRs have the same contractual coverage as was available to the failed retailer (**recommendation 5**)
- requiring designated RoLRs to pass on the benefits of gas directions to consumers would help ensure that consumer outcomes are prioritised (**recommendation 6**).

Our recommendations would reduce costs and improve incentives for failing retailers in electricity and gas

The Commission has made four recommendations (**recommendations 7 - 10**) to improve the RoLR scheme for both electricity and gas RoLR events. These recommendations would improve clarity regarding the RoLR scheme, and support timely access to information. Our recommendations would also reduce costs for both designated RoLRs and consumers, and address existing perverse incentives for retailers interacting with the RoLR scheme.

These four recommendations have the following key benefits:

- improving the RoLR cost recovery framework would increase certainty for market participants (**recommendation 7**)
- expanding the AER's information gathering powers under the RoLR Regulatory Information Notice process would help ensure that designated RoLRs have timely access to important information (**recommendation 8**)
- introducing a new bill framework would reduce the cost of RoLR events for consumers (to the extent that the failed retailer is able to pay the bill, as well as disincentivise misuse of the RoLR scheme) (**recommendation 9**)
- a new civil penalty would further disincentivise misuse of the RoLR scheme, thereby avoiding unnecessary costs being passed on to consumers **(recommendation 10**).

Jurisdictions are primarily responsible for implementing these recommendations

These recommendations primarily involve changes to the National Energy Retail Law (NERL), meaning that they must be implemented by jurisdictions through the South Australian Parliament. We consider that the recommendations of this Review are important in improving the RoLR scheme, financial resilience, and outcomes for both market participants and consumers.

As such, the Commission welcomes the opportunity to work constructively with jurisdictions, if and when these recommendations are progressed for implementation. In addition to changes to the NERL, several recommendations must be implemented through changes to AER guidelines.

Retailer failure is managed through the RoLR scheme

The RoLR scheme protects consumers by ensuring continuity of energy supply to a customer if their retailer fails. Under the RoLR scheme, if a retailer fails the AER allocates their customers to one or more other retailers. These retailers are referred to as 'designated RoLRs'. This scheme is supported by a gas directions framework which allows the AER to direct gas supply in the event of a retailer failure.

Between 2012 and 2022, the RoLR scheme had only been used four times, and the AER had never used its RoLR gas directions powers. In 2022, the National Electricity Market saw record high wholesale prices and reduced liquidity in the contract market. This put significant pressure on retailers, and contributed to a record number of retailer failures, and the AER using its gas directions powers for the first time.

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20 June 2024