

Australian Energy Market Commission
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Lodged online: www.aemc.gov.au

19 November 2020

RPR0015 – Review of the retailer of last resort scheme

The Australian Energy Council welcomes the opportunity to make a submission to the Australian Energy Market Commission's (AEMC) Review of the retailer of last resort (RoLR) scheme consultation paper (the Consultation Paper).

The Australian Energy Council (AEC) is the industry body representing 22 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The COVID-19 pandemic has placed significant pressures on business in Australia, and energy retailers have not been exempt from these challenges. While this has brought to the fore the potential for retailer failure, the AEC does not consider as a starting proposition that the need for RoLR reform has been proven. As noted by the AEMC, there have been just five RoLR events since 2007, with the most significant of these affecting 67,500 Jackgreen customers in 2009. Since that time the largest retailer failure has been Go Energy with some 2000 customers.

While the customer experience arising from retailer failure is clearly undesirable, the AEC considers that a number of the reforms proposed by the AEMC do not materially change this experience, and in fact, may unintentionally disadvantage impacted customers.

The AEC is more supportive of technical reforms designed to simplify the RoLR process or encourage a broader spread of retailers to nominate as RoLR's. These reforms represent sensible steps to develop a RoLR regime more reflective of the makeup of the current retail market.

Retail Contracts for RoLR customers

The AEC consider that the AEMC has not yet proven that the benefits of this proposed reform outweigh its risks and challenges. Further practical assessment, in conjunction with clear regulatory impact assessments, are necessary before it is progressed.

The AEMC notes that the existing framework where customers are placed onto standing offers is likely to result in customers paying higher prices than they would if they were placed onto a market offer. Standing offers are designed to be a safety net for customers who do not actively participate in the market, and the Default Market Offer (DMO) places a price cap furthering that safety net. The AEC agrees with the AEMCs characterisation of the different outcomes for customers on standing offers compared with market offers, but considers that ultimately, the competitive retail market delivers maximum benefits to customers when they are incentivised to engage and to enter into a retail offer of their choosing. Policy responses should seek to enhance the ability of customers to access these benefits, rather than to mitigate losses.

Practically, this proposal would require the AER to develop a mechanism to approve a potential RoLR's market retail contract prices and terms. In the event of a retailer failure, the AER would be able to move customers onto the RoLR's approved market retail contract without their explicit informed consent (EIC).

The AEC believes that this would require significant consequential changes to sections of the National Energy Retail Law (NERL) and the National Energy Retail Rules (NERR). EIC is a critical element of the regulatory framework, and retailers have developed significant processes and procedures to ensure that customers are only switched onto market retail contracts in circumstances where they obtain and maintain clear records of that EIC. While the Consultation Paper does not go into detail of the specific regulatory changes that would be required to implement this reform, the AEC expects these changes to be material, vastly increasing the risk of regulatory error and unintended outcomes.

Further, the AEC considers there are risks for consumers that might outweigh the benefits highlighted by the AEMC for making this change. While the contractual terms and prices that would be approved by the AER might be considered beneficial to the standing offer, given the risks that come from a RoLR event, the AEC does not expect these would be near to the cheapest available offer. They are also unlikely to be on contractual terms tailored to the customer's preferences. By placing a customer on a market offer without their consent, the AEC is concerned that customers might be discouraged from immediately engaging in the market and seeking out a more preferable deal after a RoLR event. As highlighted by the AEMC¹ and Oakley Greenwood² in the lead up to the introduction of the DMO in 2018, customers are more likely to engage when the benefits from doing so are greater. The AEC considers there are risks that customers might be comforted by the fact that they have been transferred onto a market offer, rather than seeking to engage and find the best available offer for their needs.

Given the above stated risks, the AEC considers that the primary benefit that might arise from this reform would be to incentivise retailers who to date have opted not to nominate as RoLR's due to the standing offer obligations. Whilst this may be beneficial for customers if there is a broad expansion of participation, and ultimately improved competition outcomes, the AEC believes a number of steps are required before any clear recommendations are put forward as part of this review. Primarily, the AEC encourages the AEMC to survey retailers to identify the likelihood of this outcome before any changes are made. Provided there is appetite amongst retailers that would enhance customer outcomes, the AEMC should undertake further consultation on technical and consequential amendments that might be required to enable this change, including the impacts on other aspects of the regulatory framework – in particular, around the impacts on EIC.

RoLR cost recovery arrangements

The AEC supports the AEMC developing approaches to increase certainty for retailers around costs. Whilst not appropriately tested, the existing cost recovery arrangements are high level, and create risks for retailers that the AER might not allow prudent costs to be recovered.

The AEC agrees that without this certainty, there is a disincentive on retailers who might otherwise participate in the scheme, particularly those who do not have significant vertical integration.

Changes to RoLR notices

The AEC does not oppose steps to increase the time allowed for the AER for a RoLR designation. That being said, the AEC considers there is insufficient evidence as to the impact of this change – either positive or negative.

¹ AEMC, Customer and competition impacts of a default offer, Final report, 20 December 2018, Paragraph 29

² Oakley Greenwood, Advantages of a reference price as compared to a default market offer, 12 December 2018

While a delay might provide the AER more flexibility to identify and agree terms with potential RoLR's, there will also be impacts on retailers who will be liable for energy consumed from up to 24 hours prior to the designation occurring. This might mean that costs are higher than they otherwise would be, where a retailer would have been able to hedge immediately for the additional load. In circumstances where a very high spot price caused the RoLR event, this might place pressure on smaller RoLR's.

Given this, the AEC recommends the AEMC to undertake further impact assessment of this reform to properly identify its costs and benefits. One option might be to limit the AER's ability to extend the timeframe in times when the spot price is higher. The AEC also notes the varied arrangements between gas and electricity for RoLR events, and recommend the AEMC assess these differences when undertaking further considerations or recommendations.

AEMO credit support requirements

In principle, the AEC is comfortable with extending the credit support requirements. We note that the AEMC have suggested that AEMO may raise a rule change to amend this timing for the NER, we query whether equivalent changes will also be proposed to the NGR.

RoLR plan requirements

The AEC strongly supports the minor amendments proposed by the AEMC. The existing obligations are unnecessarily prescriptive, and providing the AER with flexibility as to when RoLR exercises must be undertaken and published will be beneficial to participants. The AEC does not see any detrimental impacts from making this change.

RoLR arrangements for embedded networks

The AEC supports further investigation from the AEMC to understand the benefits and risks of expanding the RoLR scheme to embedded networks. As the AEMC is aware, the existing requirements regarding embedded networks are out of date, and comprehensive changes are required to ensure that customers are able to benefit from competition.

However, the AEC does not consider that steps should be taken to implement an embedded network RoLR scheme until such time that the full recommendations from the AEMC's Updating the Regulatory Frameworks for Embedded Networks review are implemented. This review made wide ranging recommendations to improve experiences for customers within embedded networks, and undertaking a piecemeal implementation of individual recommendations risks detracting from the broader reform agenda.

Moving the RoLR arrangements from the NERL to the NERR

The AEC does not see any particular benefits from this proposed change. While the AEMC notes that increased flexibility may be needed as the market evolves, the AEC considers that the RoLR scheme is of sufficient importance that the certainty that comes from inclusion in the NERL is beneficial.

As noted above, the RoLR scheme has not been used frequently. There remains no evidence that changes are critical to ensure it operates as intended in the event of retailer failure. Given this lack of certainty, the AEC considers that this change is unnecessary. This change should only be considered in the event that multiple RoLR events test the scheme and find it lacking.

Conclusion

The RoLR scheme has to date performed effectively, and has minimised the customer impacts of retailer failure. The changes the AEMC are proposing can only be considered incremental, and should not be considered as removing the clearly negative consequences that come from retailer failure.

As noted above, the AEC welcomes efforts by the AEMC to streamline processes and procedures to increase retailer confidence, and hopefully these reforms will see an increase in the number of retailers who register as RoLR's in the future.

For any questions about our submission please contact me by email at ben.barnes@energycouncil.com.au or on (03) 9205 3115.

Yours sincerely,

A handwritten signature in black ink, appearing to be the initials 'BB' with a stylized flourish.

Ben Barnes
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