



19 November 2020

Mr Benn Barr
Chief Executive Officer
Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2001

Dear Mr Barr

AEMC Review of the Retailer of Last Resort (RoLR) scheme - RPR0015

Thank you for the opportunity to comment on this consultation paper.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON receives and responds to complaints from customers on metering work and electricity supply interruption issues relating to retailer and distributor activities. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those issues in the consultation paper that align with issues customers raise with EWON.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely

A handwritten signature in black ink that reads "Janine Young".

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

AEMC Review of the Retailer of Last Resort (RoLR) scheme

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON receives and responds to complaints from customers on metering work and electricity supply interruption issues relating to retailer and distributor activities. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those issues in the consultation paper that align with issues customers raise with EWON.

COVID-19, customer experiencing vulnerability and consumer protections

The RoLR scheme, which is aimed at ensuring energy customers will not lose their supply of energy if a retailer is no longer able to supply its customers, is vital to the stability of the energy market. The AEMC is rightly concerned about the impacts of a potential default of multiple retailers on other market participants and customers. We acknowledge the AEMC's concerns about the impact of COVID-19 on the RoLR scheme, retailers, and customers.

In the current environment, it could be very difficult for the RoLR(s) to identify customers who are experiencing, or are at risk of experiencing, vulnerability. This is because COVID-19 has led to the number of such customers expanding. New approaches need to be considered and established. Overall, we consider that the AEMC's review of the RoLR scheme and proposed solutions is an important step towards addressing the potential collapse of retailers and RoLR events, for both retailers and customers. However, it is critical that any changes to the RoLR scheme, including consumer notifications and/or advice (from regulators, failed retailers and RoLRs), should ensure that consumer protections are not diminished because of a RoLR event.

Question 1: Retail contracts for RoLR customers

- a. Do you agree that removing the requirement for RoLR customers to be placed on standard retail contracts would improve RoLR scheme customer outcomes?**
- b. Are there any consequential changes to the RoLR scheme that should be made if this change is made?**

EWON supports the AEMC's position that removing the requirement for RoLR customers to be placed on standard retail contracts would improve RoLR scheme customer outcomes. The AEMC notes that this will give the AER greater flexibility to protect customers' interests regarding price through competition and may lead to more retailers volunteering to be RoLRs, which will be beneficial for customers.

However, there may be some risks for customers that should be considered. As the AEMC notes, standard retail contracts have consumer protections that may not be offered in a market retail contracts. The National Energy Retail Rules (NERR) sets out requirements that for standard retail contracts and/or market retail contracts. Some of the requirements that are only available for standard retail contracts provide critical consumer protections. For example, bills must be issued at least once every 100 days, unless the customer provides explicit informed consent (Rule 24); the pay-by date for a bill must not be earlier than 13 business days from the bill issue date (Rule 26); and the retailer must accept certain payment methods for a bill (Rule 32(1)). The AER will therefore need to be mindful of the consumer protections in a market contract when offered as a RoLR contract.

In addition, conditional discounts available under market offers may not be beneficial for some customers. Where possible, alternative options for discounts or payment options should be made

available for customers that have been transferred to another retailer's market contract following a RoLR event.

At a minimum, disclosure to customers transferred under RoLR conditions should be provided with plain English advice about terms and conditions of the new contract as well as options for contact to establish any special payment arrangements which the customer previously had established with the failed retailer.

Question 3: Framework for RoLR designation

- a. Do you agree that it would be beneficial to delay RoLR designation?**
- b. If so, in implementing the recommendation to delay designation of the RoLR, what is the best approach and timing of the AER's notices to communicate the RoLR event and designated RoLR to market participants and consumers?**

EWON generally supports the AEMC's proposed solution to delay the RoLR designation. This will give the AER time to consider which retailer is suitable for RoLR designation, considering the customers of the failed retailer, and the costs associated with taking a potentially large number of new customers. This should benefit both retailers and customers.

RoLR communication to customers should include reference to the availability of payment plans and other forms of customer support, particularly for customers who have been on the failed retailer's affordability programs (given that this information is not automatically transferred when a RoLR event occurs). When notifying customers about a RoLR event and designated retailer, the customer's preferred communication method should be used.

When considering the timing of notices for a major RoLR event, the AER will need to have regard to the number of customers impacted and possible media attention which could lead to customers seeking advice about it. Further, potential AER delays in notifying customers about a RoLR event could lead to higher levels of customer dissatisfaction or concern about ongoing supply. Customer and media responses could be quite strong, given the current COVID-19 environment which has led to heightened consumer anxiety and therefore this should be considered.

Question 6: Appointment of administrator as a trigger for a RoLR event

- a. Is the appointment of an administrator an appropriate trigger for a RoLR event?**
- b. Would the appointment of an administrator be more appropriate to trigger a monitoring process by the AER? If so:**
 - **What type of reporting from the administrator to the AER would be appropriate?**
 - **What are some alternative triggers for a RoLR event following the appointment of an administrator?**

The AEMC notes that the appointment of an administrator should not necessarily lead to a RoLR event. EWON generally supports the AEMC's position that the appointment of an administrator should trigger a monitoring process by the AER, rather than an immediate trigger for a RoLR event. However, we consider that it would be useful for the AER to provide guidelines about what would trigger a RoLR event once a retailer is part of the AER monitoring process. This will ensure transparency and may address / prevent emerging problems. The guidelines could also set out the requirements, i.e. status of administration and frequency of reporting for the retailer to report to the AER during the monitoring process.

Question 7: RoLR arrangements for embedded networks

- a. Should embedded networks have some form of RoLR arrangements?**
b. If yes, what solution is appropriate to provide embedded network customers with RoLR arrangements?

EWON supports the need for embedded networks to have some form of RoLR arrangements. For many embedded networks, the exempt sellers are residential park owners or strata with limited knowledge about energy market arrangements. If an exempt seller collapses, a suitable option would be for the retailer at the parent connection to become the RoLR as this option would minimise any financial risks to that retailer. It should be noted that while this ensures continuity of electricity supply, pricing of RoLR contracts for residential park customers needs special consideration given these customers currently receive price protection under NSW legislation and customers within embedded networks may not have access to retail competition.

The AEMC notes that it has conducted a review of embedded networks and has made recommendations that involve changes to law and rules. Appropriate legislation needs to be urgently established for embedded networks given the prolific growth of exempt entities / embedded networks. EWON will continue to support the AEMC with respect to prioritising the implementation of its proposed recommendations. Further, the gaps in legislation need to be closed to ensure that customers of embedded networks can access the same consumer protections as other customers.

Question 8: Other issues

- a. Would it be beneficial to include elements of the RoLR scheme in the NERR?**
b. What other issues are there with the RoLR scheme and how could they be addressed?
c. Are there other changes, outside of those included in this review, that would reduce barriers for retailers to volunteer as RoLRs?
d. Are there other changes, outside of those included in this review, that would improve the effectiveness of the RoLR scheme?

All changes to RoLR requirements should support flexibility for customers and ensure continuity of consumer protections. In addition, any changes to the National Electricity Retail Law (NERL) and NERR should ensure that the existing consumer protections are not removed.

In addition, the impact of a RoLR event on customers who use new technologies should be further explored.

Electric vehicles and storage batteries have created additional dependency on the electricity network and the introduction of specialised market retail offers to service customer needs. Accordingly, RoLR arrangements need to consider the market offers these customers are on and the essentiality of electricity, given that it is now also required for telecommunication and personal transport.

Enquiries about this submission should be directed to Janine Young, Ombudsman on (02) 8218 5256 or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.