Opt-in factsheet

Retailer Reliability Obligation

This factsheet is for large energy users who have contracts that reduce their exposure to the electricity spot price, such as power purchase agreements with generators, and who may wish to manage Retailer Reliability Obligation (RRO) obligations on their own behalf.

To do this, you need to apply to the AER. This process is called 'opting in'. There is a cut-off day for applying, which is the day **18 months** from the date the RRO is first triggered for a reliability gap. This is usually approximately 18 months prior to the start of a reliability gap.

What is the RRO?

The Retailer Reliability Obligation, or RRO, aims encourage investment in electricity generation capacity and demand response. It achieves this by introducing a contracting requirement on certain businesses (electricity retailers or large energy users that purchase electricity directly from the wholesale electricity market).

The Australian Energy Market Operator (AEMO) assesses forecast demand against anticipated supply and issues reliability forecasts as part of its annual Electricity Statement of Opportunities (ESOO). If AEMO identifies a forecast reliability gap in electricity supply for a participating region[1] in three years' time, it will ask the Australian Energy Regulator (AER) to issue a "T-3" reliability instrument for that region. Energy Ministers in participating regions can also make their own T-3 reliability instruments.

A T-3 Reliability Instrument puts retailers, other parties that purchase electricity directly from the wholesale energy market ('liable entities') on notice to enter into sufficient qualifying contracts[2] to cover their share of the peak demand forecast during the forecast gap period. Certain large users of energy can choose to 'opt-in' to the RRO and become liable entities themselves, so that their own contracts with suppliers (e.g. power purchase agreements with generators) will count as qualifying contracts. The cut-off day for applications to opt-in will be set for 18 months from the date of the T-3 reliability instrument.[3]

If the forecast reliability gap is still reported in the ESOO one year out, AEMO will ask the AER to issue a "T-1" instrument setting out a contract position day by which liable entities must finalise their Net Contract Position (NCP).[4] The contract position day will be approximately 12 months prior to commencement of the gap period.[5]

1 The RRO applies in Queensland, New South Wales, Australian Capital Territory, Victoria, Tasmania and South Australia.

2 National Electricity Law (NEL), s.14O(1): A 'qualifying contract' is a contract or other arrangement that a liable entity entered into to manage its exposure to wholesale electricity market spot prices. It must be a contract that is directly related to the purchase or sale, or price for the purchase or sale, of electricity from the wholesale exchange during a stated period.

3 National Electricity Rules (NER), cl.4A.D.7

4 NEL, s.14O(3)

5 NER, cl.4A.C.10(b)

A liable entity's NCP is the number of megawatts of electricity to which the liable entity's qualifying contracts relate. This number is adjusted to account for the levels of certainty that different contract types provide. Depending on the nature and type of contract, it is possible that a liable entity will retain some exposure to spot market price volatility due to contracts not a) limiting high price exposure, b) covering an adequate volume of electricity, or c) having terms that limit coverage.[6] We discuss how to determine the value that can be attached to different contract types in our Contracts and Firmness Guidelines.[7]

The T-1 instrument will also set a contract reporting day, at least two months after the contract position day,[8] by which liable entities must report their NCPs to the AER.[9] The report must be submitted in accordance with the National Electricity Rules (NER), and lodged in accordance with, and in the form specified by, the AER's Contracts and Firmness Guidelines.[10]

If, at any point during the reliability gap period, actual peak demand is greater than the one-in-two year peak demand forecast (which AEMO assesses to be an amount likely to be exceeded once in any two-year period), all liable entities (including opt-in customers) must be sufficiently contracted so that their NCP is equal to their share of forecast one-in-two year peak demand for the relevant trading interval.[11]

The RRO obligations to be sufficiently contracted and submit an NCP report inform the AER's assessment of compliance following a reliability gap period. They are civil penalty provisions,[12] and failure to comply with them may attract financial penalties should the AER decide to take enforcement action.

They also inform AEMO's recovery of its costs during the relevant gap period as a procurer of last resort (PoLR) under the Reliability and Emergency Reserve Trader framework, under which liable entities whose share of load is not covered by their NCP may have to pay costs of up to an individual maximum of $100 million.

What to consider if you're thinking about opting in

Once approved as an opt-in customer, you will be a liable entity for the relevant reliability instrument and all RRO obligations will apply to you.

You should carefully review the relevant rules and AER Guidelines and your ability to comply with the relevant obligations, including payment of your share of potential PoLR costs, before applying to opt-in.

Large customers may encounter challenges in contracting with a new retailer after the retailer has finalised its NCP. This is because a retailer cannot adjust its NCP after the

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6 AER, *RRO Interim Contracts and Firmness Guidelines*, August 2019, s.3.2

7 AER, *RRO Interim Contracts and Firmness Guidelines*, August 2019

8 NER, cl.4A.C.10(d)

9 NEL, s.14P

10 AER, *RRO Interim Contracts and Firmness Guidelines*, August 2019

11 NEL, s.14R(2)

12 Civil penalty provisions provide enforcement options to the AER. For the RRO, these include issuing Infringement Notices of $67,800, or instituting proceedings in a Court and seeking penalties of up to $1,587,100 for a liable entity's first breach of the RRO, and up to $11,060,000 for subsequent breaches.

contract position day to account for a load for a new customer (unless it is for a new connection point) if that customer is eligible to opt-in to the RRO itself.

Under the rules, certain contracts entered into by large energy users prior to the RRO policy design being published in August 2018 can be relied on as part of a liable entity's NCP.[13] These "grandfathered contracts", which can be a retail, wholesale or demand response contract, provide full risk coverage to the holder under the RRO, even if in practice there are price or volume risks or other limitations.[14] However, these contracts cannot be relied upon by your retailer. This means your retailer will need to ensure *their own contracts* cover their load portfolio and may pass on these additional costs to you, unless you opt-in to manage your own obligations.

Who can opt-in?

An application to opt-in is specific to a particular reliability instrument, and a particular region. There are two categories of large customer that are eligible to opt-in to the RRO, summarised in Figure 1 below:

- **Large opt-in customers[15]** that purchase electricity from a Market Customer (an electricity retailer) and have consumption in excess of 50 gigawatt hours (GWh) per annum in the relevant gap region. Large opt-in customers must opt-in for the entire load at a connection point, for the full forecast reliability gap period (that is, they must opt-in for all days and all trading intervals identified in the T-1 reliability instrument).
- **Prescribed opt-in customers[16]** that do not meet the eligibility criteria to register as a large opt-in customer, but satisfy other criteria including the following load thresholds:
    - the annual peak demand for a connection point must be equal to or greater than 30 megawatts (MW)
    - the percentage of the annual peak demand for that connection point that the customer seeks to opt-on for is equal to or greater than 5 MW.

  Again, an application to opt-in must be for the full forecast reliability gap period (that is, they must opt-in for all days and all trading intervals identified in the T-1 reliability instrument).

The AER's RRO Opt-In Guidelines set out the full list of eligibility criteria relating to these categories.[17]

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[13] National Electricity Rules (NER), cl.11.116.8.

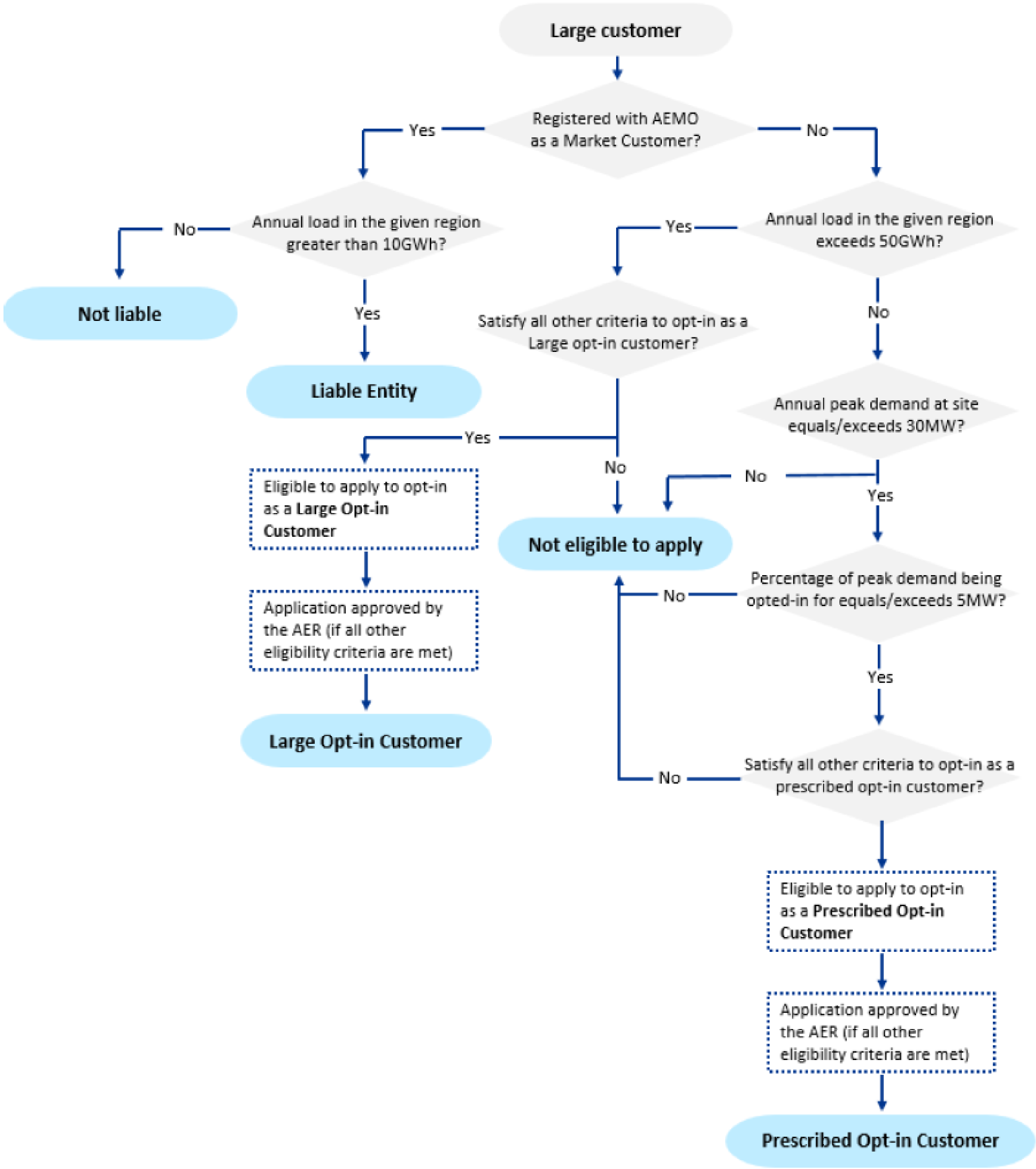
[14] AER, *RRO Interim Contracts and Firmness Guidelines*, August 2019, s.4.1.4.

[15] NER, cl.4A.D.4

[16] NER, cl.4A.D.5

[17] AER, *RRO Opt-in Guidelines*, June 2020, s.4.3 and s.5.1

Figure 1: Flow diagram explaining opt-in eligibility for large customers



How to opt-in

Eligible large customers must apply to the AER if they wish to become an opt-in customer. Entities must submit a separate application in relation to each reliability instrument.

All applications to register as an opt-in customer (or to vary an existing registration) must be made by the opt-in cut off day, which is the day 18 months from the date the relevant T-3 instrument is published.[18] This is necessary to allow retailers to establish their NCPs with regard to which of their eligible large customers have and have not opted in.

Opting-in to become a liable entity for an RRO instrument does not require you to register with AEMO as a Market Customer. If you become an approved opt-in customer, you retain your retailer for the supply of electricity and will only take responsibility for obligations under the RRO.

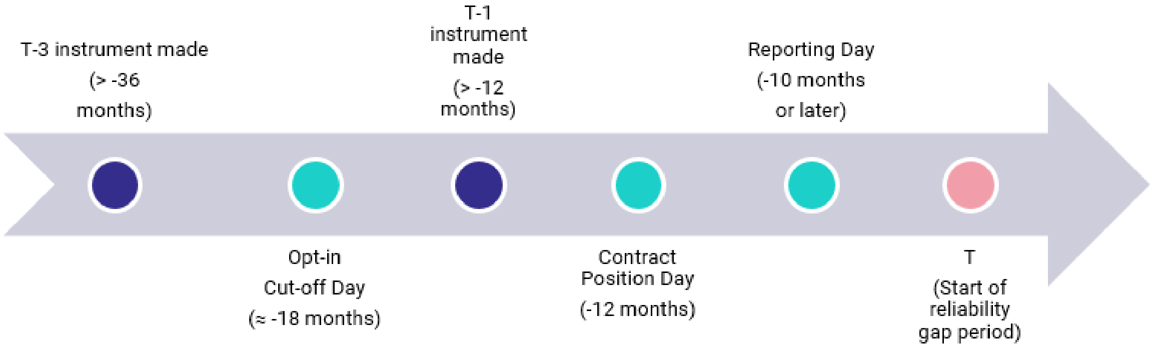
Information on the opt-in process, including the processes for registering, deregistering or amending registration, and the criteria for assessing opt-in eligibility, are set out in the AER's Opt-in Guidelines.[19]

Applications will need to be accompanied by sufficient supporting information to demonstrate that all eligibility criteria, including consumption and demand thresholds, have been met.[20]

What are the key dates?

- **Opt-in cut-off day**: 18 months after the date the relevant T-3 instrument takes effect, which is usually approximately 18 months prior to the start of the reliability gap. The AER has no discretion to accept applications after the cut-off day.
- **Contract position day**: About 12 months prior to a forecast reliability gap. The T-1 instrument sets out this date. A business's NCP cannot be changed after this date unless they meet the criteria to apply to the AER for an NCP adjustment.
- **Reporting day**: At least two months after the contract position day. The T-1 instrument sets out this date.

The order of these events and estimated timeframes are shown below.



More information

The RRO is established under Part 2A of the National Electricity Law (NEL), and Part 4A of the NER. Its operation and implementation are supported by a number of AER RRO guidelines, all of which are available on the AER's website. The AER has also published guidance for liable entities and other participants in the RRO, including a list of frequently asked questions (FAQs).[21]

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18 NER, cl.4A.D.7.

19 AER, *RRO Opt-in Guidelines*, June 2020

20 AER, *RRO Opt-in Guidelines*, June 2020, s.4.4-4.5 (large customers) and s.5.4-5.5 (prescribed customers).

21 AER, *RRO FAQs*, June 2023

The AER maintains a register of reliability instruments, which sets out timelines applicable to each.[22] You can keep track of new instruments as they are made by subscribing to our website.[23]

If you have any questions relating to the RRO, you can contact the AER at RRO@aer.gov.au. While the AER does not provide legal advice, we encourage such communication, so that we can provide general guidance, where appropriate. These requests will assist us to determine whether further AER guidance may be appropriate or to inform our policy position on particular issues.

This fact sheet does not have legal force and is for guidance purposes only. It is not intended to be a comprehensive guide to the range of obligations under the RRO. It reflects the Law, Rules and Guidelines in place in March 2024. The AER cannot provide a definitive interpretation of the relevant legislation because that is the role of the Courts. We recommend that you obtain your own legal advice if you are unsure about specific aspects of the NEL or NER and how they may apply to your situation.

22 https://www.aer.gov.au/industry/retail/reliability-obligation#register-of-reliability-instruments

23 Enter your contact details and subscribe for electricity retail updates in your region.

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