

# Are you a liable entity?

## Retailer Reliability Obligation

This guidance note steps through the criteria that govern whether current and potential electricity market participants are liable under the Retailer Reliability Obligation (RRO). It has been prepared to assist Market Customers and Integrated Resource Providers (IRPs) to determine whether they are likely to be liable under the RRO.

### The RRO

The RRO aims to encourage investment in electricity generation capacity and demand response across periods of expected high demand for electricity.

The Australian Energy Market Operator (AEMO) assesses forecast demand against anticipated supply. AEMO is required to issue 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<sup>1</sup> in 3 years' time, it will ask the Australian Energy Regulator (AER) to issue a T-3 (T being the start of the gap period) reliability instrument for that region.<sup>2</sup>

A T-3 reliability instrument puts liable entities<sup>3</sup> on notice to enter into sufficient contracting to cover their share of the peak demand forecast during the forecast gap period.

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.<sup>4</sup> By the contract position day, liable entities must hold a sufficient Net Contract Position (NCP) for the reliability gap period.<sup>5</sup> The T-1 instrument will also set a contract reporting day, at least 2 months after the contract position day.<sup>6</sup> Liable entities must report their NCPs to the AER by the reporting day.<sup>7</sup>

Businesses that are not liable entities as at the contract position day may subsequently become liable entities as 'new entrants' in certain circumstances. The T-1 instrument will set out:

- a 'new entrant contract position day', by which new entrants must finalise their NCP, which must be after the beginning of the gap period,<sup>8</sup> and
- a 'new entrant reporting day', at least 10 business days after the new entrant contract position day, by which new entrants must report their NCPs.<sup>9</sup>

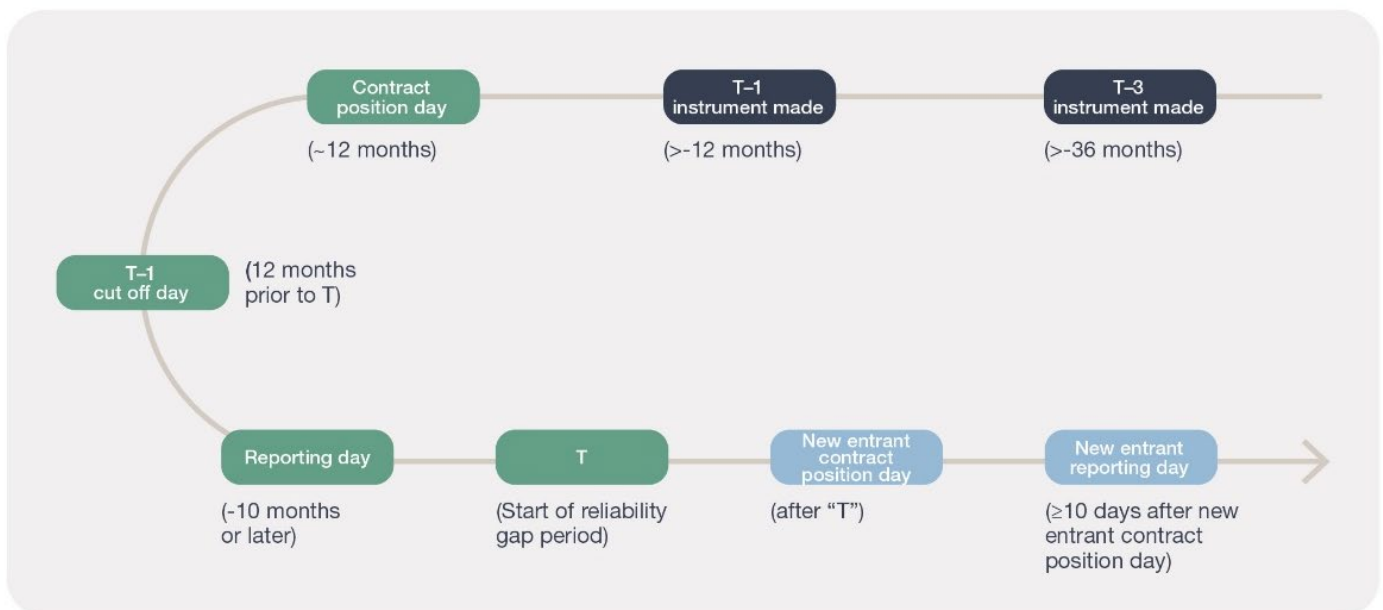
A liable entity's NCP is locked in on the contract position day or new entrant contract position day, unless it is eligible for an adjustment.<sup>10</sup>

## Consequences of non-compliance

We assess compliance with the above contracting and reporting requirements.<sup>11</sup> The RRO places obligations on liable entities to be sufficiently contracted and submit an NCP report. A liable entity's failure to comply with them may attract financial penalties should the AER decide to take enforcement action.

The AER's assessment also informs 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 this framework, liable entities whose share of load is not covered by their NCP may have to pay costs of up to a maximum of \$100 million each.<sup>12</sup>

## Key dates



- **T-3 instrument made:** At least 3 years prior to a forecast reliability gap.<sup>13</sup>
- **T-1 instrument made:** More than 12 months prior to a forecast reliability gap.<sup>14</sup>
- **Contract position day:** About 12 months prior to a forecast reliability gap. The T-1 instrument sets out this date.<sup>15</sup> A business's NCP cannot be changed after this date unless they meet the criteria to apply to the AER for an NCP adjustment.<sup>16</sup>
- **T-1 cut-off day:** 12 months to the start of the reliability gap period.<sup>17</sup>
- **Reporting day:** At least 2 months after the contract position day.<sup>18</sup> The T-1 instrument sets out this date.<sup>19</sup> A liable entity's NCP report is due for submission to the AER on this day. It must reflect the liable entity's NCP for the forecast reliability gap period, as it is on the contract position day.<sup>20</sup>
- **T, start of the reliability gap period** as stated in the T-1 instrument.<sup>21</sup>
- **New entrant contract position day:** Must be after T, as set out in the T-1 instrument.<sup>22</sup>
- **New entrant reporting day:** At least 10 business days after the new entrant contract position day. It is set out in the T-1 instrument.<sup>23</sup>

## Summary of liable entity criteria

Significant PoLR cost impacts and potential penalties are associated with non-compliance with RRO obligations. Consequently, it is important for businesses to understand whether they are liable entities under the RRO.

Once the AER or relevant minister makes a T-3 instrument, businesses should review their operations against section 14D of the National Electricity Law (NEL) and Chapter 4A, Part D of the National Electricity Rules (NER). These contain the key provisions setting out who is (and who is not) a liable entity for a given reliability instrument. The AER is not responsible for notifying businesses of who will be liable entities impacted by each reliability instrument.

A person is a liable entity for a region if any one of the following criteria is met:<sup>24</sup>

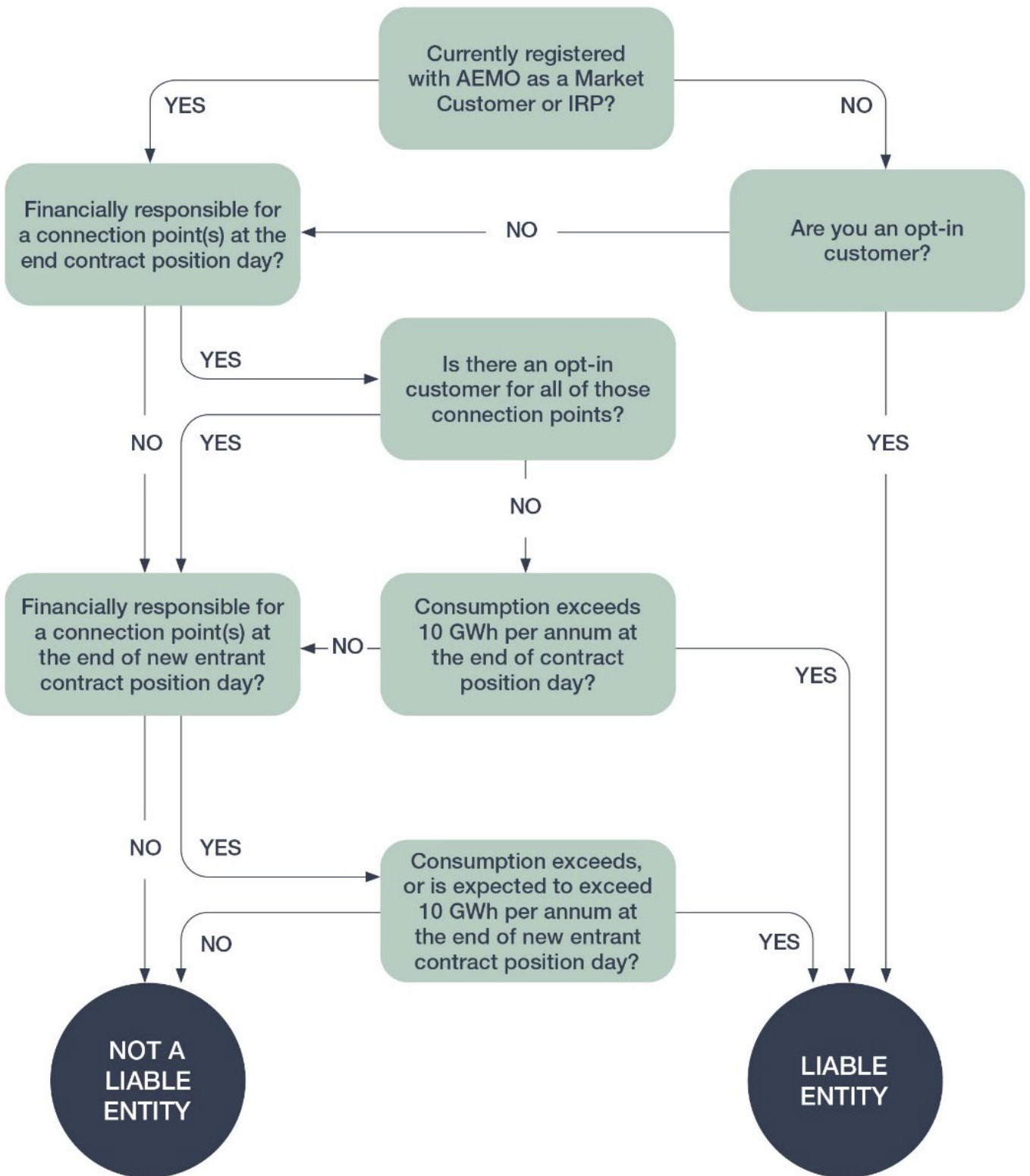
1. the person is a Market Customer or IRP and is financially responsible for a connection point in that region at the end of the contract position day but only to the extent there is no opt-in customer for that connection point at the end of the contract position day;
2. the person is registered as a large opt-in customer for a connection point in that region at the end of the contract position day;
3. the person is registered as a prescribed opt-in customer for a connection point in that region at the end of the contract position day; or
4. the person is a new entrant in that region under clause 4A.D.3.<sup>25</sup>

A person who is a Market Customer or IRP is not a liable entity for a region if:<sup>26</sup>

1. it is not financially responsible for a connection point in that region at the end of the contract position day; or
2. the aggregate consumption of electricity of all connection points in that region for which it is financially responsible at the end of the contract position day (excluding any market connection point for a market generating unit or small generating unit) is equal to or less than 10 GWh per annum as determined in accordance with the Contracts and Firmness Guidelines.

Figure 1 will help you understand whether you may be a liable entity.

**Figure 1 Liabe entity flow diagram**



## Detailed breakdown of criteria

### Clause 4A.D.2(a) – Liable entities – positive criteria

**1. Are you a Market Customer or IRP that is financially responsible for a connection point in the reliability instrument region at the end of contract position day? (Clause 4A.D.2(a)(1))**

All Market Customers and IRPs could be liable entities under the RRO. This includes retailers and other parties that purchase electricity directly from the wholesale energy market, such as large industrial customers and businesses that have registered bidirectional units (such as batteries) with AEMO. IRP is a new type of participant category that is potentially a liable entity under the RRO since the 'Integrating energy storage systems into the NEM' rule change (IESS rule change).<sup>27</sup>

A business's status as a liable entity is determined at the end of contract position day, not before or (except for new entrants) after that date. If you are currently not a Market Customer or IRP, you could still be a liable entity under the RRO if you register under one of these categories before the end of contract position day.

A Market Customer or IRP may be owned by, or related to, another Market Customer/IRP. It is still possible for **both** of those businesses to be financially responsible for different connection points within the same region. If this is the case, both businesses could be liable entities for the same instrument (depending on the answers to the below questions).

If the answer to question 1 is 'yes', go to question 3.

If the answer is 'no', go to question 2.

**2. Are you registered as a large opt-in customer or prescribed opt-in customer? (Clause 4A.D.2(a)(2))**

Certain large users of energy can choose to 'opt-in' to the RRO and become liable entities themselves. The cut-off day for opt-in applications is 18 months from the date of the T-3 reliability instrument.<sup>28</sup>

Opt-in customers are not treated differently from other liable entities and are subject to the same obligations and penalties under the RRO. The AER has published a [separate guidance](#) providing key information for customers considering opting in.

If you are an opt-in customer, you are a **liable entity**.

If you are not an opt-in customer, go to question 3.

**3. Is there an opt-in customer for all of the connection points for which you are registered? (Clause 4A.D.2(a)(3))**

A business is a liable entity only to the extent there is no opt-in customer for that connection point at the end of contract position day.

An opt-in customer(s) could successfully opt in for all connection points for which a Market Customer or IRP is financially responsible at the end of contract position day. In this scenario, the Market Customer or IRP would not be a liable entity.

If the answer to question 3 is 'yes', go to question 5.

If the answer is 'no', go to question 4.

## **Clause 4A.D.2(b) – Liable entities – negative criteria**

### **4. Is your annual aggregate consumption equal to or less than 10 GWh at the end of contract position day? (Clause 4A.D.2(b)(2))**

A Market Customer or IRP should determine net consumption (consumption less generation/exports to the national electricity grid) at all connection points for which it is financially responsible during the 12 months prior to the end of the contract position day. However, this calculation should not include any net consumption at market connection points for a market generating unit or small generating unit.<sup>29</sup>

AEMO provides weekly settlement statements with accompanying raw data to all Market Customers and IRPs. These settlement statements contain information about metered consumption. The accompanying raw data contains exports to, and imports from, the national electricity grid.

Market Customers and IRPs should use the above information and data, as well as any relevant behind-the-meter data, to self-assess whether their aggregate consumption (net consumption) has exceeded the 10 GWh per annum threshold during the 12 months prior to the end of the contract position day.

### **Example calculation**

- A Market Customer is financially responsible for three connection points during the 12 months prior to the end of the contract position day.
- The first connection point has a large load and no battery or other generation. Net consumption is simply the consumption from the large load.
- The second connection point has a large load and a small battery that is not classified as a market bidirectional unit.<sup>30</sup> Net consumption at this connection point is the consumption from the large load and battery (when charging) less exports to the national electricity grid from the battery when it is generating.
- The third connection point has a market generating unit. Any flows at this connection point should be excluded from the calculation as the connection point is for a market generating unit.
- Total net consumption is the sum of the net consumption at the first two connection points only.

If you are a Market Customer or IRP with more than one participant ID in a region, you will need to sum net consumption across all participant IDs to determine aggregate consumption.

A business's participant category could transition under the IESS rule change from Market Customer to IRP during the 12 months prior to the contract position day. In this scenario, the business should ensure it calculates net consumption as a Market Customer until it becomes an IRP.

A business should be prepared to justify its calculations for the purposes of clause 4A.D.2(b)(2) of the NER. For 5 years from the end of the year in which the activities take place,<sup>31</sup> a regulated entity<sup>32</sup> must keep records of its activities that:

- allow the regulated entity to give accurate information and data relating to its compliance with the RRO<sup>33</sup>
- enable the AER to assess whether the regulated entity has complied with its obligations under the RRO.<sup>34</sup>

To monitor a liable entity's compliance with the RRO, including its self-assessment of whether it is liable, the AER may:

- send information requests to a liable entity
- serve a notice requiring a person to provide information or produce a document that the AER requires for the performance or exercise of a function or power conferred on it under the NEL or NER<sup>35</sup>
- carry out (or require a regulated entity to carry out) a compliance audit pursuant to the Reliability Compliance Procedures and Guidelines.<sup>36</sup>

If the answer to question 4 is 'yes', go to question 5.

If the answer is 'no', you are a **liable entity**.

## Clauses 4A.D.2(b)(4) and 4A.D.3 – New entrants

### 5. Are you a Market Customer or IRP that is financially responsible for a connection point at the end of new entrant contract position day? (Clause 4A.D.3(a))

Any Market Customer or IRP could be a liable entity under the RRO if they are financially responsible for a connection point at the end of the new entrant contract position day. This is irrespective of when they first became a Market Customer or IRP. The new entrant contract position day is set by the AER in the T-1 instrument. It must be after the first day of the reliability gap period.<sup>37</sup>

If the answer to question 5 is 'yes', go to question 6.

If the answer is 'no', you are **not liable**.

**6. Does your annual aggregate consumption exceed, or is it expected to exceed, 10 GWh per annum at the end of the new entrant contract position day? (Clause 4A.D.3(c))**

To be a liable entity under the RRO as a new entrant, a business's consumption of electricity at all connection points in the region to which the RRO pertains must exceed, or be expected to exceed, 10 GWh per annum at the end of the new entrant contract position day. A business should use net consumption (consumption less generation) at all connection points for which it is financially responsible over a 12-month period. However, this calculation should not include net consumption at any small resource connection points.<sup>38</sup>

The AER's view is that there are 2 situations where a business could become a new entrant (and hence a liable entity):

- The business's actual annual consumption was less than or equal to 10 GWh as at the end of the contract position day, but exceeds 10 GWh as at the *new entrant* contract position day. This could be due to the business's load at existing connection points increasing, or an increase in the number of connection points in the region for which the business is financially responsible.
- The business became a Market Customer or IRP after the contract position day and its consumption either exceeds, or is expected to exceed, 10 GWh per annum for its first year as a Market Customer or IRP.

The calculation of actual annual consumption for a new entrant is similar to that for a liable entity outlined in question 4 above.

Some businesses may not have 12 months of actual consumption data prior to the end of the new entrant contract position day. These businesses will need to exercise judgement when self-assessing whether their consumption is expected to exceed 10 GWh per annum in their first year as a Market Customer or IRP.

When estimating consumption after the new entrant contract position day, businesses should be prepared to justify their calculations.<sup>39</sup> Evidence of likely growth may include (but is not limited to):

- contracts to cover a business's own load
- contracts for supply to customers that indicate expected consumption, or
- contracts or development approvals indicating load growth.<sup>40</sup>

If the answer to question 6 is 'yes', you are a **new entrant** and a **liable entity**.

If the answer is 'no', you are not a liable entity.



## Checklist

Have you checked whether you are a Market Customer or IRP that is financially responsible for a connection point in the reliability instrument region at the end of the contract position day?	<input type="checkbox"/>
Have you confirmed whether there is an opt-in customer for all of the connection points for which you are registered?	<input type="checkbox"/>
Have you calculated your annual aggregate (net) consumption at the end of the contract position day? Is it equal to or more than 10 GWh? Have you included only relevant connection points in your calculation?	<input type="checkbox"/>
Have you checked whether you are a Market Customer or IRP that is financially responsible for a connection point at the end of the new entrant contract position day?	<input type="checkbox"/>
Have you calculated whether your annual aggregate (net) consumption exceeds, or is expected to exceed, 10 GWh per annum at the end of the new entrant contract position day? Have you included only relevant connection points in your calculation? If estimating consumption, have you considered evidence of likely growth?	<input type="checkbox"/>
Are you able to justify all consumption calculations if contacted by the AER?	<input type="checkbox"/>
Have you confirmed whether you are registered as a large opt-in customer or prescribed opt-in customer for the reliability gap period?	<input type="checkbox"/>
If you have self-assessed as a liable entity, have you considered your requirements as a liable entity to hold a sufficient NCP for the reliability gap period and report your NCP to the AER? See more information <a href="#">here</a> .	<input type="checkbox"/>
Do you need to contact the AER regarding any questions or further information? If yes, please do so as early as possible.	<input type="checkbox"/>

## More information

The AER has also published guidance for liable entities and other participants in the RRO, including a list of frequently asked questions (FAQs) and specific guidance notes on different stages of the RRO process.<sup>41</sup>

The AER maintains a [register of reliability instruments](#), which sets out timelines applicable to each.<sup>42</sup> You can keep track of new instruments as they are made by [subscribing to our website](#). Enter your contact details and [subscribe](#) for electricity retail updates in your region.

Please first review the guidance notes, [FAQs](#) and [RRO Guidelines](#) for further information about the RRO. If you have any questions after reviewing these materials, you can contact the AER at [RRO@aer.gov.au](mailto: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 guidance note 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 August 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.

© Commonwealth of Australia 2024 provided under a [Creative Commons Attribution 4.0 International licence](#) (CC BY 4.0 licence). The information in this publication is for general guidance only. It does not constitute legal or other professional advice. For further information see [aer.gov.au/disclaimer-copyright](http://aer.gov.au/disclaimer-copyright). For inquiries about this publication, email [aer inquiry@aer.gov.au](mailto:aer inquiry@aer.gov.au).

## Endnotes

---

- <sup>1</sup> The RRO applies in Queensland, New South Wales, the Australian Capital Territory, Victoria, Tasmania and South Australia.
- <sup>2</sup> National Electricity Law (NEL), s. 14I. Under section 14JA of the NEL, energy ministers in participating regions can also make their own T-3 reliability instruments.
- <sup>3</sup> Market Customers (e.g. retailers and other parties that purchase electricity directly from the wholesale energy market), IRPs and 'opt-in' customers (e.g. large energy users).
- <sup>4</sup> National Electricity Rules (NER), cl. 4A.C.10(b).
- <sup>5</sup> See NEL, ss. 14K(4)(b)(i) and 14R(2).
- <sup>6</sup> NER, cl. 4A.C.10(d).
- <sup>7</sup> The reporting day is the day on or before which liable entities must report their NCP as at the end of the contract position day to the AER under section 14P of the NEL (see NEL, ss. 14K(4)(b)(ii) and 14P(1)).
- <sup>8</sup> See NEL, ss. 14K(4)(b)(i), 14P(1) and NER, cl. 4A.C.10(c).
- <sup>9</sup> See NEL, s. 14K(4)(b)(ii) and NER, cl. 4A.C.10(d).
- <sup>10</sup> NEL, s. 14R(3).
- <sup>11</sup> See NEL, ss. 14P(1) and 14R(2) and NER, cl. 4A.E.6 and 4A.F.7.
- <sup>12</sup> See NEL, s. 14T and NER, cl. 3.15.9A.
- <sup>13</sup> AEMO must request a T-3 reliability instrument at least 3 years and 3 months before the forecast reliability gap period under clause 4A.C.2(a) of the NER. Clauses 4A.C.9(c) and 4A.C.6(b) then operate to require the AER to make its decision on the instrument more than 3 years before the gap period.
- <sup>14</sup> AEMO must request a T-1 reliability instrument at least one year and 3 months before the forecast reliability gap period under clause 4A.C.3(a) of the NER. Clauses 4A.C.9(c) and 4A.C.6(b) then operate to require the AER to make its decision on the instrument before the T-1 cut-off day.
- <sup>15</sup> NEL, s. 14K(4)(b)(i) and NER, cl. 4A.C.10(b).
- <sup>16</sup> See NEL, s. 14R(3).
- <sup>17</sup> NEL, s. 14G(4).
- <sup>18</sup> NER, cl. 4A.C.10(d).
- <sup>19</sup> NEL, s. 14K(4)(b)(ii) and NER, cl. 4A.C.10(d).
- <sup>20</sup> NEL, s. 14P(1).
- <sup>21</sup> NEL, s. 14I(4)(c).
- <sup>22</sup> NER, cl. 4A.C.10(c).
- <sup>23</sup> NER, cl. 4A.C.10(d).
- <sup>24</sup> NEL, s. 14D and NER, cl. 4A.D.2.
- <sup>25</sup> Clause 4A.D.3 sets out that a person is a new entrant and liable entity for a region if the person:
  - (a) is a Market Customer or IRP that is financially responsible for a connection point in that region at the end of the new entrant contract position day;
  - (b) was not a liable entity for that region at the end of the contract position day; and
  - (c) the aggregate consumption of electricity of all connection points in that region for which it is financially responsible at the end of the new entrant contract position day (excluding any small resource connection points) exceeds, or is expected to exceed, 10 GWh per annum as determined in accordance with the Contracts and Firmness Guidelines.

- 
- <sup>26</sup> NER, cl. 4A.D.2(b).
- <sup>27</sup> On 8 April 2024, the AEMC received a rule change request from Tesla, Neoen and Iberdrola to amend the NER to exempt scheduled bidirectional units from being considered as liable entities. At the date of publication, the AEMC is currently consulting on this rule change request.
- <sup>28</sup> NER, cl. 4A.D.7.
- <sup>29</sup> Chapter 10 of the NER defines both ‘market generating unit’ and ‘small generating unit’:
- A market generating unit is a generating unit that has been classified as such in accordance with Chapter 2. Clause 2.2.4(a) relevantly provides that “[a] generating unit must be classified as a market generating unit unless AEMO approves its classification as a non-market generating unit in accordance with clause 2.2.5”.
  - A small generating unit is a generating unit (a) with a nameplate rating that is less than 30MW and (b) that is incorporated in a generating system or an integrated resource system in relation to which AEMO has given an exemption under clause 2.1A.2 from the requirement to register as a Generator or IRP.
- <sup>30</sup> As defined in Chapter 10 of the NER, a market bidirectional unit is a bidirectional unit (also defined in Chapter 10) that has been classified as such in accordance with Chapter 2. Clause 2.2.5A(a) relevantly provides that “[a] bidirectional unit must be classified as a market bidirectional unit unless AEMO approves its classification as a non-market bidirectional unit in accordance with clause 2.2.5B”.
- <sup>31</sup> NEL, s 18ZC(2).
- <sup>32</sup> Under s 18ZA(2) of the NEL, a ‘regulated entity’ is a liable entity or another person prescribed by the NER. Clause 4A.G.24 of the NER in turn designates an MLO generator to be a regulated entity for certain purposes.
- <sup>33</sup> NEL, s 18ZC(1)(a).
- <sup>34</sup> NEL, s 18ZC(1)(b).
- <sup>35</sup> NEL, s. 28.
- <sup>36</sup> NEL, s. 18ZE. Section 6 of the [Reliability Compliance Procedures and Guidelines](#) sets out how compliance audits are to be carried out.
- <sup>37</sup> NER, clause 4A.C.10(c).
- <sup>38</sup> ‘Small resource connection point’ is defined in Chapter 10 of the NER as follows:
- A connection point that connects one or more small generating units or small bidirectional units (or any combination) to the national grid, where the only supply to the connection point is: (a) for use by a small bidirectional unit connected at the connection point; or (b) auxiliary load of a small generating unit or small bidirectional unit connected at the connection point.
- See endnote 29 for the definition of ‘small generating unit’. Chapter 10 defines ‘small bidirectional unit’ as “[a] bidirectional unit (a) with a nameplate rating that is less than 5 MW and (b) that is incorporated in an integrated resource system in relation to which AEMO has given an exemption under clause 2.1A.2 from the requirement to register as an IRP”.
- <sup>39</sup> AER, [Interim Contracts and Firmness Guidelines](#), p.64.
- <sup>40</sup> AER, [Interim Contracts and Firmness Guidelines](#), as above.
- <sup>41</sup> AER, [RRO FAQs](#), June 2023; [Opt-in](#), April 2024; [NCP adjustment guidance](#), August 2024; [NCP reporting guidance – timing, form, and content](#), August 2024.
- <sup>42</sup> AER, [Register of reliability instruments](#).