

# NCP adjustment guidance

## Retailer Reliability Obligation

This guidance note is for liable entities<sup>1</sup> under the Retailer Reliability Obligation (RRO) who have submitted a Net Contract Position (NCP) report to the Australian Energy Regulator (AER) and may wish to submit an NCP adjustment application.

### 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>2</sup> in 3 years' time, it will ask the AER to issue a T-3 reliability instrument (T being the start of the gap period) for that region.<sup>3</sup>

A T-3 reliability instrument puts liable entities on notice to enter into sufficient contracting to cover their share of the peak demand forecast during the forecast gap period. Certain large users of energy can also choose to 'opt-in' to the RRO and become liable entities themselves.<sup>4</sup>

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>5</sup> By the contract position day, liable entities must hold a sufficient NCP for the reliability gap period.<sup>6</sup> The T-1 instrument will also set a contract reporting day, at least 2 months after the contract position day.<sup>7</sup> Liable entities must report their NCPs to the AER by the reporting day.<sup>8</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>9</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>10</sup>

Liable entities that wish to adjust their NCP, following the applicable reporting day, may be able to submit an adjustment application to the AER. This guidance note details key dates and submission processes for adjustment applications.

## Consequences of non-compliance

We assess compliance with the above contracting and reporting requirements as part of our post reliability gap period role.<sup>11</sup> Our assessment informs AEMO's recovery of its costs during the relevant gap period as a procurer of last resort 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>

The RRO places obligations on liable entities to be sufficiently contracted and submit an NCP report, which are civil penalty provisions. A liable entity's failure to comply with them may attract financial penalties should the AER decide to take enforcement action.

## NCP adjustment

Clause 4A.E.7 of the NER allows a liable entity to apply for an adjustment to its NCP to accommodate certain changes in circumstances since the contract position day or new entrant contract position day. Examples of a change in circumstances include an increase in the liable entity's expected maximum demand (EMD) during the reliability gap period.

There are 5 categories of permitted adjustment events in clause 4A.E.7(b) for which a liable entity's NCP may be adjusted:

1. The number of connection points for small customers in the region for which the liable entity is financially responsible changes such that the liable entity's expected maximum demand reported in its NCP report will increase by more than 10%.
2. The number of connection points for large customers (who are below the opt-in customer threshold) in the region for which the liable entity is financially responsible changes such that the liable entity's expected maximum demand reported in its NCP report will increase by more than 1%.
3. The liable entity becomes financially responsible for a new connection point established after the position day where the large customer at that connection point is at or above the opt-in customer threshold such that the liable entity's expected maximum demand reported in its NCP report will increase by more than 1%.
4. A liable entity is transferred retail customers in the region in its capacity as a RoLR.
5. If the liable entity is an opt-in customer, that liable entity's expected maximum demand reported in its NCP report will increase by more than 1%.

If an adjustment event occurs, a liable entity may apply to the AER for an adjustment to its original NCP in accordance with the AER's Interim Contracts and Firmness Guidelines.

An adjustment can be approved only to the extent required to cover the increase in expected maximum demand due to an adjustment event during the gap trading intervals specified in the relevant reliability instrument.

The AER will accept applications for adjustment after the adjustment event has occurred. For example, where a retailer has entered into a contract with a new customer, the adjustment event (if any) occurs once the contract has taken effect. So, an adjustment application may be made once the contract has taken effect, but not earlier.

The AER must assess, and either approve or reject, the application based on demonstration that:

- an adjustment event has occurred, and
- the proposed adjustment is proportional to the change in expected maximum demand.

If the AER rejects the application, it may approve an alternative adjustment to that proposed by the liable entity.<sup>13</sup>

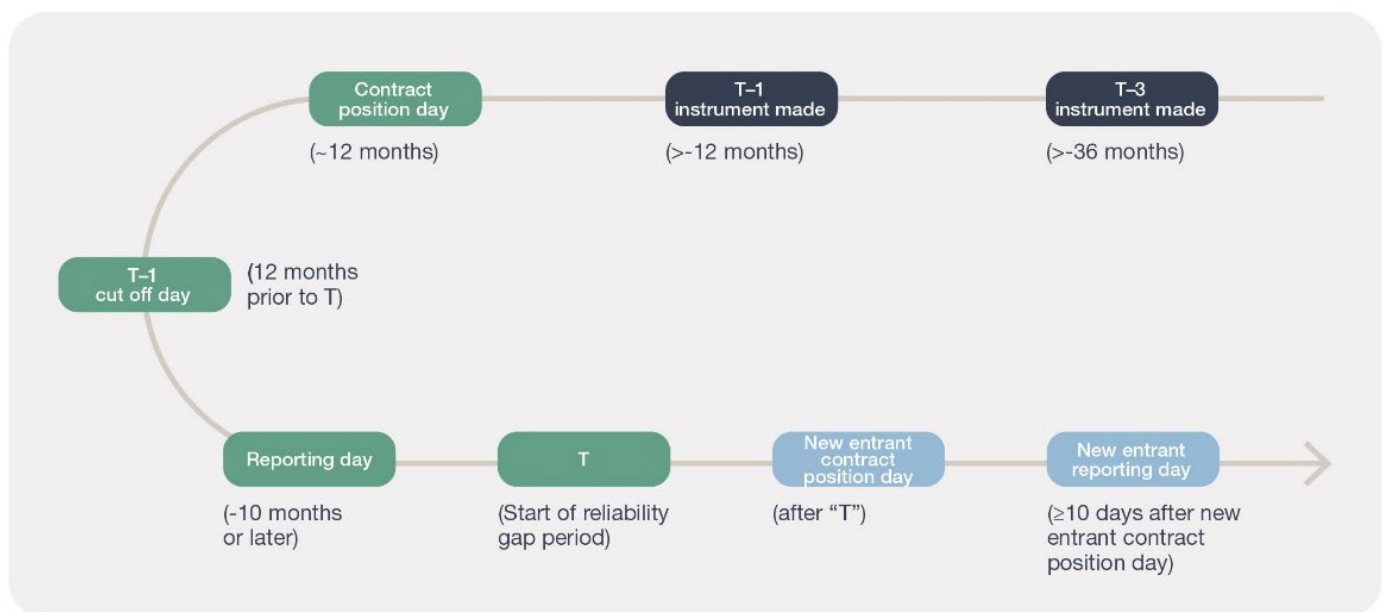
Section 9.3 of the AER's Interim Contracts and Firmness Guidelines (the Guidelines) provides further information on how the AER will assess whether a liable entity has met the relevant requirements in an adjustment application.<sup>14</sup>

If the AER approves the application, the adjusted NCP takes effect from the date of the AER's notification of approval. The adjusted NCP cannot be backdated.<sup>15</sup>

Should the AER reject the application and not approve an alternative adjustment, the entity's original NCP submitted on the contract reporting day will remain in effect. The AER will give written reasons to the applicant if it rejects the application.<sup>16</sup>

You should carefully review clause 4A.E.7(b) of the NER and consider whether the changes in your NCP will meet the conditions for an adjustment event.

## Key dates



- **T-3 instrument made:** At least 3 years before a forecast reliability gap.<sup>17</sup>
- **T-1 instrument made:** More than 12 months before a forecast reliability gap.<sup>18</sup>
- **Contract position day:** About 12 months before a forecast reliability gap. The T-1 instrument sets out this date.<sup>19</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>20</sup>
- **T-1 cut-off day:** 12 months to the start of the reliability gap period.<sup>21</sup>
- **Reporting day:** At least 2 months after the contract position day.<sup>22</sup> The T-1 instrument sets out this date.<sup>23</sup> NCP reports are due for submission to the AER on this day.

Applications for adjustment may be submitted from the date of NCP report submission until T, the start of the reliability gap period.<sup>24</sup>

- **T, start of the reliability gap period** as stated in the T-1 instrument.<sup>25</sup> NCP adjustments are due before this date unless the AER specifies another date is specified.<sup>26</sup>
- **New entrant contract position day:** Must be after T, as set out in the T-1 instrument.<sup>27</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>28</sup>

## Submitting an adjustment application

Applicants submitting an adjustment application should email the AER at [RRO@aer.gov.au](mailto:RRO@aer.gov.au) with the subject 'Adjustment to Net Contract Position Report [gap period]'. We will provide a secure file transfer platform for you to submit your application and supporting information.

As set out in the Guidelines, an adjustment application must include:

1. the liable entity's revised NCP report, including the adjusted NCP – the liable entity must submit its entire NCP report again, not just an updated subsection
2. supporting information justifying the basis of the adjustment to the NCP
3. documentation supporting that the increase in demand forecast has satisfied the conditions in section 9.3 of the Guidelines.<sup>29</sup>

If you consider that an adjustment event has occurred or is likely to occur, we encourage you to contact the AER early. We can guide you on any supporting information you may need when you prepare the application.

## Supporting information to include in your adjustment application

The liable entity must provide enough supporting information to satisfy the AER that the increase in its EMD has reached the specified thresholds. There may be very little time between an adjustment event occurring and the forecast reliability gap period commencing, so it is important to provide sufficient information at the time of submission. This will assist the AER to make a timely decision.

Applications will need to be accompanied by sufficient supporting information and evidence to demonstrate that all eligibility criteria, including consumption and demand thresholds, have been met.<sup>30</sup> This guidance note gives some examples of the types of material that will strengthen an application. An applicant should consider providing supporting evidence according to the relevant adjustment event as listed in Table 1.

**Table 1 Supporting information**

Information the AER may ask for evidence of	Adjustment event this may apply to
There has been an increase in connection points.	All
<b>The relevant connection points are in the National Electricity Market (NEM).</b>	All
<b>The connection points are in the region that the gap period is expected in.</b>	All

Information the AER may ask for evidence of	Adjustment event this may apply to
The connection point(s) were established after the contract position day or new entrant contract position day (depending on which position day applies).	4A.E.7(b)(3)
The consumption for each of the new customers meets the relevant consumption threshold for the adjustment event for the region. <sup>31</sup>	4A.E.7(b)(1), (2) & (3)
The applicant is the financially responsible market participant <sup>32</sup> for all the new customers.	4A.E.7(b)(1), (2), (3) & (4)
The liable entity's EMD has increased by the relevant percentage for the adjustment event.	4A.E.7(b)(1), (2), (3) & (5)
The new EMD has been calculated using reasonable assumptions.	All
The amount and type of contracts purchased to cover the increase in EMD are in proportion to the percentage increase in EMD.	All

An applicant should carefully consider the elements of the relevant criteria and the evidence it is putting forward to prove those elements. Examples of the types of evidence that an applicant may choose to submit include:

- Tier 1 (evidence that will likely help to support the criteria)
  - a list of the new connection points/National Metering Identifiers, including confirmation that the connection points are in the relevant region and in the NEM
  - historical consumption data for all the new customers from the year prior to the submission of the adjustment application
  - EMD calculations with supporting data to demonstrate that the increase in contracting is only to the extent required to cover the increase in EMD.<sup>33</sup>
- Tier 2 (information that may help to support the criteria in the absence of Tier 1 evidence)
  - customer contracts giving a reliable indication of consumption history or forecasts
  - standard operating procedures and/or written business, compliance and risk processes – for example, entities may have specific categories or procedures for customers of different sizes, which may help to demonstrate the demand and consumption thresholds
  - consumption and demand forecasts (as opposed to historical data) with supporting information about the forecast calculations.

This list of information is not exhaustive. We encourage applicants to consider where combinations of Tier 1 and Tier 2 information will help to demonstrate the criteria for an adjustment event having occurred. The AER will request further information where required.

## Notification of decision

The AER will endeavour to notify the applicant of approval or rejection of the application within 30 business days of submission. This timeframe is contingent on submission of a complete and fully supported application.

Early engagement with the AER is crucial for applicants wanting to know the outcome of their application ahead of the forecast reliability gap period. Applicants should consider submitting their application as early as possible after an adjustment event has occurred.

## Checklist

Are you a liable entity?	<input type="checkbox"/>
Have you submitted an NCP report to the AER?	<input type="checkbox"/>
Has one of the adjustment events listed under Clause 4A.E.7(b) occurred?	<input type="checkbox"/>
Do you have evidence to support that an adjustment event has occurred?	<input type="checkbox"/>
Do you have supporting information to support your application in accordance with Table 1 in this guidance note?	<input type="checkbox"/>
Is your proposed NCP increase only to the extent required to cover the increase in EMD?	<input type="checkbox"/>
Do you need to contact the AER in regard to any supporting information or questions about your application? If yes, please do so as early as possible.	<input type="checkbox"/>

## More information

The AER has published guidance for liable entities and other participants in the RRO, including a list of [frequently asked questions](#) (FAQs) and specific guidance on different stages of the RRO process.<sup>34</sup>

The AER maintains a [register of reliability instruments](#), which sets out timelines applicable to each.<sup>35</sup> You can keep track of new instruments as they are made by [subscribing to our website](#).<sup>36</sup>

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.

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## Endnotes

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- <sup>1</sup> Market customers (e.g., retailers and other parties that purchase electricity directly from the wholesale energy market) and integrated resource providers.
- <sup>2</sup> The RRO applies in Queensland, New South Wales, the Australian Capital Territory, Victoria, Tasmania and South Australia.
- <sup>3</sup> National Electricity Law (NEL), s. 14I. Under section 14JA of the NEL, state and territory energy ministers in participating regions can also make their own T-3 reliability instruments.
- <sup>4</sup> The AER has published a [separate RRO opt-in guidance](#) providing key information for customers considering opting in.
- <sup>5</sup> National Electricity Rules (NER), cl. 4A.C.10(b).
- <sup>6</sup> See NEL, s. 14K(4)(b)(if) and 14R(2).
- <sup>7</sup> NER, cl. 4A.C.10(d).
- <sup>8</sup> The reporting day is the day on or before which liable entities must report their NCP as at the contract position day to the AER under section 14P of the NEL (see also section 14K(4)(b)(ii)).
- <sup>9</sup> See NEL, ss. 14K(4)(b)(i), 14P(1) and NER, cl. 4A.C.10(c).
- <sup>10</sup> See NEL, s. 14K(4)(b)(ii) and NER, cl. 4A.C.10(d).
- <sup>11</sup> See NEL, s. 14R(2) and NER, cl. 4A.F.7.
- <sup>12</sup> See NEL, s. 14T and NER, cl. 3.15.9A.
- <sup>13</sup> NER cl. 4A.7(e)(2).
- <sup>14</sup> AER, [RRO Interim Contracts and Firmness Guidelines](#), August 2019. Section 9.3.
- <sup>15</sup> NER cl. 4A.E.7(f).
- <sup>16</sup> NER cl. 4A.E.7(e)(1).
- <sup>17</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>18</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>19</sup> NEL, s. 14K(4)(b)(i) and NER, cl. 4A.C.10(b).
- <sup>20</sup> See NEL, s. 14R(3).
- <sup>21</sup> NEL, s. 14G(4).
- <sup>22</sup> NER, cl. 4A.C.10(d).
- <sup>23</sup> NEL, s. 14K(4)(b)(ii) and NER, cl. 4A.C.10(d).
- <sup>24</sup> See AER, [RRO Contracts and Firmness Guidelines](#), August 2019, section 9.3.
- <sup>25</sup> NEL, s. 14I(4)(c).
- <sup>26</sup> AER, [RRO Interim Contracts and Firmness Guidelines](#), August 2019, section 9.3.
- <sup>27</sup> NER, cl. 4A.C.10(c).
- <sup>28</sup> NER, cl. 4A.C.10(d).
- <sup>29</sup> AER, [RRO Interim Contracts and Firmness Guidelines](#), August 2019. Section 9.3.5; NER cl. 4A.E.7(c).
- <sup>30</sup> AER, [RRO Interim Contracts and Firmness Guidelines](#), August 2019. Section 9.3.1 (small customer threshold), section 9.3.2 (large customer threshold), section 9.3.3 (RoLR), section 9.3.4 (Opt-in).

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<sup>31</sup> The upper consumption thresholds are currently 100 MWh in all regions except South Australia where the threshold is 160 MWh. Large customers' consumption must be at or above the upper consumption threshold. Small customers' consumption must be below the upper consumption threshold. See further AER, [RRO Interim Contracts and Firmness Guidelines](#), August 2019, section 9.3.2.

<sup>32</sup> The market participant who is financially responsible for a site, connection points or customers.

<sup>33</sup> NER cl. 4A.E.7(a).

<sup>34</sup> AER, [RRO FAQs](#), June 2023; [Opt-in](#), April 2024; [Are you a liable entity?](#), August 2024; [NCP reporting guidance – timing, form, and content](#), August 2024.

<sup>35</sup> AER, [Register of reliability instruments](#).

<sup>36</sup> Enter your contact details and [subscribe](#) for electricity retail updates in your region.