



# **Final Determination - Interim Contracts and Firmness Guidelines Retailer Reliability Obligation**

August 2019

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# 1 Background

The Australian Energy Regulator (AER) is responsible for a number of roles in the Retailer Reliability Obligation (RRO) under the National Electricity Rules (Rules). One of these roles is to publish a range of guidelines necessary to implement the RRO. The AER has published the interim Contracts and Firmness Guidelines (Guidelines) in accordance with rule 11.116.6(a) regarding *qualifying contracts* and firmness.

*Liable entities* are required to enter into sufficient *qualifying contracts* by T-1 to meet their share of AEMO's *one-in-two year peak demand forecast* during a *forecast reliability gap period*. *Liable entities* are required to provide their *net contract position* (NCP), assessed one year before the *forecast reliability gap period*, to the AER by the *reporting day*. When reporting to the AER, *liable entities* must adjust their *net contract position* to reflect how effective their contracts are at limiting exposure to volatility in the wholesale electricity spot price (firmness adjustment). This firmness adjustment must be carried out in accordance with the *firmness methodology* in the Guidelines.

The interim Guidelines are intended to assist *liable entities* to understand how the AER will exercise its functions in relation to *qualifying contracts* and the *net contract position* report (*NCP report*). The interim Guidelines also provide guidance on determining firmness factors for *qualifying contracts* and establishing a panel of *Independent Auditors*.

This document sets out the reasons for the AER's decisions on the Guidelines following the issues raised by stakeholder submissions.

The AER received a total of 24 submissions from a range of stakeholders. These included 13 retailers and generators, industry bodies, large Market Customers, government agencies, consumer organisations, large businesses, consulting firms and a wholesale electricity platform.

## 2 Issues raised in submissions to the draft Guideline

This section highlights a number of issues raised in the consultation process, formally in submissions or via informal feedback, and the AER's response.

### 2.1 Development of the Guidelines

Several stakeholders raised concerns that the RRO development process has happened very quickly and that issues are likely to have been missed. The AER acknowledges the concerns of stakeholders however, the AER is bound by the timelines in the Rules.<sup>1</sup> Further, the development of the final Contracts and Firmness Guidelines will follow another consultation process in line with the *Rules Consultation Procedures*.<sup>2</sup>

Origin's submission queried the South Australia-specific law and regulations allowing the South Australian Minister to declare a *T-3 reliability instrument* and proposed that the AER work through any transitional issues with the South Australian Government. For clarification, the AER's role in the RRO relates to the national Law and Rules. The AER does not formally play a role in South Australia's alternative process for triggering the RRO. If the South Australian Minister declares a *T-3 reliability instrument*, the declaration does not need to be submitted to the AER for approval. Once the South Australian Minister makes the declaration, the RRO comes into effect as stipulated in the Rules from T-3, and the AER assumes its usual RRO responsibilities.

However, the AER will continue to engage with the South Australian Government, as with any interested stakeholder, where relevant.

### 2.2 AER's approach to Contracts and Firmness

Stakeholder submissions were largely supportive of the AER's approach, under Section 3 of the Guidelines and the types of *qualifying contracts* that were categorised as *standard qualifying contracts* or *non-standard qualifying contracts* within the draft Guidelines.

AGL, Ergon, ERM Power and Snowy Hydro were all of the view that the Guidelines should not take a restrictive approach towards determining firmness to allow for new products and innovation within the wholesale electricity market. Submissions emphasised that allowing *liable entities* some flexibility while the interim Guidelines are in place would assist participants work through the implementation of the RRO for the first time. Energy Users Association of Australia (EUAA) also raised that the AER should have in mind minimising the costs of compliance with the RRO for *liable entities* when drafting the Guidelines.

The AER's ability to be flexible is bounded by the Rules. Within these boundaries, the AER has taken a pragmatic approach to minimise the compliance burden on *liable entities* where possible. The AER recognises the need to strike a balance between providing simple guidance in the form of a *default firmness methodologies* for *standard qualifying contracts*

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<sup>1</sup> Rule 11.116.6

<sup>2</sup> Rule 4A.E.8(c)

while providing a framework that aligns with the Rules within which *bespoke firmness methodologies* can be developed to reflect the complexities of *non-standard qualifying contracts*.

## 2.3 Firmness Principles

Firmness is the extent to which a contract will decrease the buyer's exposure to spot price volatility during a *forecast reliability gap period*.<sup>3</sup> A contract's firmness factor must be determined using a *firmness methodology*. *Firmness methodologies* are determined with regard to the *firmness principles* as stipulated under the Rules.<sup>4</sup> The AER is of the view that the *firmness principles* reflect three types of risk - price risk, volume risk and contract limitations. These are multiplied together to calculate a firmness factor.

Snowy Hydro submitted that there should be an additional duration principle that would assess the length of time the source of coverage underlying a *qualifying contract* could meet peak demand. The AER agrees that *liable entities* should anticipate the reliability and length of coverage for their *qualifying contracts*. However, an additional criteria is not required as duration is implicit within the consideration of volume risk.<sup>5</sup> The Guidelines require that uncertainty over the volume of coverage provided during the *forecast reliability gap period* be considered when assessing the firmness of a contract.

Stanwell submitted that a methodology which considers a contract as a whole, rather than modelling each of the three risks separately and then multiplying the factors together, could provide a more accurate reflection of contract firmness. The AER considers that all three risk factors need to be captured when determining a *qualifying contract's* firmness factor. The *default firmness methodologies* in the Guideline for *standard qualifying contracts* ensure each of the three risks under the *firmness principles* are included. For *non-standard qualifying contracts*, *liable entities* may develop a *bespoke firmness methodology* which considers the contract as a whole provided it complies with the Guidelines.

Snowy Hydro sought to confirm that once a firmness factor has been determined for a particular contract, this should remain unchanged and apply for the life of the contract. The AER is of the view that provided the firmness factor has been determined in accordance with the Guidelines and none of the contributing factors have changed, the firmness factor will remain unchanged and be applicable for the duration of the RRO period.

## 2.4 Standard and Non-standard Qualifying Contracts

Under the Rules, all standard contracts must be firmness adjusted using a *default firmness methodology* and all *non-standard qualifying contracts* must be firmness adjusted using a *bespoke firmness methodology*.<sup>6</sup> In the Guidelines, the AER has listed *qualifying contracts* that we consider to be *standard qualifying contracts*, with all other *qualifying contracts* being non-standard.

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<sup>3</sup> Rule 4A.E.3(a)

<sup>4</sup> Rule 4A.E.3

<sup>5</sup> Section 3.2 of the Guidelines

<sup>6</sup> Rule 4A.E.4(a) states that a *default firmness methodology* is to be applied to a *standard qualifying contract* and rule 4A.E.4(b) stipulates that a *bespoke firmness methodology* be applied for a *non-standard qualifying contract*.

Multiple stakeholders submitted that *liable entities* should have the option to choose whether to adopt a *default* or *bespoke firmness methodology*. This was raised in relation to options, caps, power purchase agreements, interregional contracts, internal generation, demand response contracts and spot pass through contracts. AGL submitted that there are interactions and synergies between non-standard and standard contracts which the current methodologies do not consider.

Whilst the AER recognises the benefits to *liable entities* of being able to choose what type of methodology to apply, the approach under the Rules is binary and does not allow for *liable entities* to choose between a *default* and *bespoke firmness methodology*.

## 2.5 Standard Electricity Swap and Cap Contracts

The Guidelines stipulate that swap contracts, which fix the price and quantity of electricity purchased, are considered firm and have a firmness factor of one. This *default firmness methodology* received support in submissions from both ERM Power and EnergyAustralia.

Cap contracts are considered *standard qualifying contracts*, and the Guidelines provide a formula for calculating a cap's firmness factor. Submissions received on caps largely related to querying the rationale behind the derivation of the cap price formula and use of five per cent of the market price cap (MPC) as a benchmark for a firm cap contract. Stakeholder views on what the precise curve should look like were divided.

ERM Power, Hydro Tasmania and Stanwell were supportive of the approach the AER has taken and were of the view that the cap price formula provided a good approximation of cap firmness. Nyrstar expressed that the use of five per cent of MPC appeared arbitrary and suggested that \$300/MWh should be used to define a standard cap consistent with pricing of cap contracts traded in the market and that any cap prices above this should be a *non-standard qualifying contract*.

AGL, EnergyAustralia and Finncorn shared the opinion that a cap price at five per cent of the MPC is too low, and that the formula overly discounts caps with high strike prices. They also suggested that the AER reconsider the correlation between cap prices and firmness to ensure that innovation is not stifled for generation designed to operate and recover costs over a small number of trading intervals at high spot prices.

The AER considers that using a threshold of five per cent of MPC allows for innovation within the contracts market and for the caps *default firmness methodology* to move with any future changes to the MPC. The use of five per cent provides a reasonable approximation of the firmness that a cap is likely to provide at each price. Increasing the cap price above five per cent of MPC creates the risk that cap contracts will be given too high a firmness rating without exposing the seller to the volatility of the spot market. Additional commentary has been provided in the Guidelines to explain the AER's use of five per cent of MPC as the cap threshold. In response to reconsidering the correlation between cap prices and firmness, the AER is of the view that the quadratic relationship incorporated in the cap price formula reflects the non-linear relationship between the two variables.

## 2.6 Interregional Contracts

Under the Guidelines, interregional contracts paired with Settlement Residue Distribution (SRD) units are *non-standard qualifying contracts*. One alternative suggestion proposed through the consultation process was for the AER to categorise interregional contracts as *standard qualifying contracts* with a *default firmness methodology*. It was proposed that the AER establish a firmness of SRD units between regions at the same time as the reliability forecast is made, and use this as the basis of the *default firmness methodology*. This would remove the requirement for *liable entities* to assess the probable limit of the interconnector during times of price separation.

The firmness factor assigned to an interregional contract should include the firmness of the contract itself, and not just the SRD units. Assigning a firmness factor based on the SRD units alone risks valuing a contract or arrangement that does little to reduce a *liable entity's* exposure to spot price volatility as highly firm. The AER requires interregional contracts to be paired with an adequate number of SRD units to provide additional hedging against the availability of the interconnector needed to access the contracted generation. For the purposes of the interim Guidelines, we have expanded on the factors that should be considered for developing a *bespoke firmness methodology* for interregional contracts.

## 2.7 Option contracts

In the draft Guidelines, options were categorised as *standard qualifying contracts* and the guidance prescribed the use of delta as an approximation for option firmness. The AER received numerous submissions on the methodology for calculating option firmness, with divided views on what the most appropriate methodology should be.

Several stakeholders were of the view that delta provides a reasonable approximation of firmness and has the benefit of being a well-understood metric. However, many stakeholders expressed concerns that the use of delta understates an option's firmness. At T-1,<sup>7</sup> options will always have a firmness factor of less than 1 due to the discount for time-based uncertainty in calculating delta. To illustrate this point, Finncorn uses the example of when a 'swaption' would have a firmness factor materially less than 1, because the swap price at T-1 is substantially lower than the strike price. This would indicate a low probability of a *forecast reliability gap period* occurring, however would require more contracting, due to options having a low firmness weighting in these circumstances. Stanwell echoed this view, and used the rationale that, despite a *liable entity* holding protection from price increases equivalent to a swap with a firmness of 1, whilst also retaining beneficial exposure to price decreases before option expiry, the firmness of an option will be less than 1.

Submissions also raised several other concerns with the proposed approach to options. Nyrstar and ERM Power had reservations about the accuracy of using exchange traded volatility to calculate delta. In relation to the pricing model, Nyrstar submitted that Black Scholes is only relevant for European options and not American or other types of options. Specifically, the Black Scholes Model only provides valid results when particular assumptions are met, and the conditions around electricity option derivatives mean that these assumptions are unlikely be satisfied in full. Multiple stakeholders also viewed the

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<sup>7</sup> T-1 is one year out from the commencement of the *forecast reliability gap period*



Guideline's individual, rather than portfolio, approach to applying *default firmness methodologies* as a shortcoming.

The submissions proposed that the difficulties with firmness adjusting options could be overcome by using an auditor approved *bespoke firmness methodology*. The AER considers that this is a sensible approach given the number of issues stakeholders have raised over using delta to approximate firmness. Options have been re-categorised as *non-standard qualifying contracts* in the Guidelines and will be firmness adjusted using a *bespoke firmness methodology*. This will allow *liable entities* to use delta if they deem it appropriate or develop a more sophisticated methodology in line with the Guidelines where necessary. We expect that, when submitting their auditors report, *liable entities* will provide reasons why their *bespoke firmness methodology* better reflects the firmness of a *qualifying contract* than using the delta approach.

## 2.8 Power Purchase Agreements (PPAs)

PPAs are a contract or arrangement to purchase a share of a generator's electricity output for a specified period of time. PPAs are typically for renewable energy generation and primarily expose *liable entities* to volume risk. The AER's draft Guidelines proposed that PPAs be classified as *non-standard qualifying contracts* that are firmness adjusted using a *bespoke firmness methodology*. The Guidelines provide that a *bespoke firmness methodology* should consider the volume of electricity that is likely to be available during the *forecast reliability gap period* for the PPA. A number of submissions were received on PPAs and the issues raised by stakeholders were varied.

Ergon was of the view that a *default firmness methodology* should be provided for PPAs. This was suggested in the context that biomass generators should be classified as *standard qualifying contracts* and attract a high firmness factor as they operate similarly to a traditional thermal power station. In response, the AER would like to clarify that attracting a high firmness factor is not dependent on a contract being classified as standard. As a *non-standard qualifying contract*, a PPA with little volume risk may still be assigned a high firmness factor using a *bespoke firmness methodology*. In relation to developing a *default firmness methodology* for PPAs, we are of the view that given the complexity of inputs and many types of PPA contracts, a *bespoke firmness methodology* is more suitable.

As a separate issue, Engie raised that there is inconsistency in the way that PPAs and internally owned generation are treated within the Guidelines. The AER takes a similar view of both types of contracts, where a *liable entity* must consider the ability for the source of generation to be used during a *one-in-two year peak demand* event during the *forecast reliability gap period*. The Guidelines have been updated to expand and clarify the guidance on developing a *bespoke firmness methodology* for PPAs and generation owned by the *liable entity*.

The Guidelines specify that historical information is to be used to determine the firmness of PPAs where available. Both Ergon and AGL commented that historical information may not always be the most appropriate metric for determining future generation outputs. Having considered the submissions, the AER's view is that historical performance is a meaningful basis for determining generation capacity for the purposes of calculating a firmness factor. The guidance also provides that historical information is to be considered with other factors

provided in the Guidelines which could impact future power generation. In balancing the need to have reliable historical information with data availability, the AER considers that three years of historical information should be sufficient.<sup>8</sup> Where sufficient historical information is not available, or where historical performance data does not reflect expected future performance, *liable entities* may take a different approach.

Finnicorn and EnergyAustralia were concerned that the variables used to determine firmness should be consistent across different types of PPAs. The AER agrees with this submission, and the preferred methodology for PPAs within the Guidelines reflects that *firmness methodologies* should apply the same *firmness principles*.

Origin requested that the Guidelines allow for multiple PPAs in the same region to be assessed together as a portfolio. The Guideline has been updated to allow for a *liable entity* to assess multiple PPAs as a portfolio. However, a firmness factor must be assigned to each PPA in the *NCP report*.

## 2.9 Generation owned by the *liable entity* (Internal Generation)

A majority of submissions received on generation owned by the *liable entity* sought clarification of, or had some misunderstanding of, how generation within these entities is to be treated. As a result of the issues and queries raised, we have clarified and added details to our guidance over how *liable entities* should treat internal generation contributing to its own *net contract position*.

Powershop and Infigen raised that a *default firmness methodology* should be developed by the AER to provide certainty for *liable entities* on the firmness of internal generation of the *liable entity*. The AER has contemplated this approach but have decided to keep internal generation in the *non-standard qualifying contract* category. The AER considers that internal generation portfolios vary across different *liable entities* and are better suited to being firmness adjusted using a *bespoke firmness methodology*.

EnergyAustralia submitted that the draft Guidelines only contemplate generation within a vertically integrated generator as being within the same *liable entity*. As this is not always the case, the Guidelines should ensure that internal generation shouldn't be limited to being within a *liable entity*. The AER is bound by the Rules which are very clear that each individual *liable entity* must meet its requirements individually.<sup>9</sup> Only the firmness of generation within a *liable entity* can be assessed using the internal generation approach. The AER has provided additional guidance around the treatment of generation and contracts owned by another legal entity within the same corporate group (via an inter-entity arrangement). This is outlined in section 5 of the Guidelines as a *bespoke firmness methodology*.

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<sup>8</sup> Paragraph 5.3.2 of the Guidelines

<sup>9</sup> Section 14R(2) *National Electricity Law* and rule 4A.F.3(a) of the Rules

## 2.10 Load following contracts

Under the draft Guidelines, 100 per cent load following contracts (bought) have a firmness factor of one, as the buyer has no exposure to spot price volatility. Having considered the submissions from stakeholders, the AER maintains this position, including the differential reporting between buyers and sellers for load following contracts. The AER acknowledges Finncorn's concerns that the current reporting system could give rise to gaming the contract volumes, however compliance is assessed on the NCP at T-1 under the Rules and not on actual volumes during the *forecast reliability gap period*. Therefore the AER cannot assess compliance ex-post using the buyer's actual volumes. Where a load is not perfectly matched for the buyer, the contract is deemed to be non-standard and a *bespoke firmness methodology*, signed off by an auditor, will be required.

## 2.11 Demand response products

Under a demand response contract or arrangement, non-scheduled load is curtailed or, in certain circumstances, provides unscheduled generation. Demand response contracts are to be firmness adjusted using a *bespoke firmness methodology* developed through considering factors provided by the Guidelines. In the draft Guidelines this included taking into account the ability for a *liable entity* to control the customer's load curtailment. Several stakeholders submitted that the guidance over what constituted 'control' was not sufficiently clear.

In response, the AER has replaced the use of 'control' to determine contract firmness with several other factors which could limit the ability for a contract to be relied upon during the *forecast reliability gap period*. We have updated the guidance to expand on the factors that must be taken into account when developing a *firmness methodology* for demand response contracts. This includes consideration of historical performance of the load in response to high spot prices and load curtailment in response to notice from the *liable entity* as suggested by submissions. The Guidelines have also provided for additional considerations, such as time taken to respond to a notice of curtailment and any other contract limitations or terms which could impact load curtailment.

ERM Power queried how demand response impacts a *liable entity's* NCP. The Guideline sets out that a *liable entity* has two options for the way they can use their demand response. The *liable entity* may register with AEMO's Demand Side Participation Information Portal (DSPIP) prior to the NCP day to rely on demand response cover for their share of system peak demand. Alternatively, a *liable entity* may choose to not register with AEMO and directly deduct the anticipated demand response megawatts from their expected demand. However, it should be noted that under the second option, the *liable entity* may be exposed if the demand response does not operate as anticipated. The Guidelines have been updated to provide a detailed explanation of these two options of reporting demand response in the NCP, and provide an example of each.

## 2.12 Grandfathered contracts

The Rules set out that 'pre-NEG transitional contracts'<sup>10</sup> entered into by market customers and opt-in customers prior to the final RRO policy design being published (formerly the NEG), are *qualifying contracts* with a firmness factor of one. They remain *qualifying contracts* for the term of the contract excluding any extensions of renewals, or until 1 July 2023 if no term is specified.

Macquarie made the criticism that the grandfathering provisions only apply where a *liable entity* satisfies requirements to be an opt-in customer. This impedes an entity's ability to utilise grandfathered contracts entered into in regions where they do not meet the opt-in threshold. A proposal for pre-NEG transitional contracts to remain *qualifying contracts* for their full term, including any renewals or extensions was also made via a request for rule 11.116.8(e) to be amended.

Whilst the AER acknowledges these concerns, it is not able to change the Rules through the Guidelines, and cannot alter the scope of contracts that can be grandfathered. As per the Rules, the grandfathering provisions apply to opt-in customers and also to Market Customers that are not licenced retailers.

## 2.13 Spot pass through contracts

The draft Guidelines did not specifically contemplate how spot pass through contracts would be treated under the RRO. In response to the submissions received, the Guidelines have been amended to clarify whether spot pass through contracts are *qualifying contracts*, and if so how their firmness factor should be calculated.

For a contract to be a *qualifying contract* it must satisfy the requirements of section 14O(1)(a) of the NEL. The AER is of the view that a spot pass through contract meets the definition of a qualifying contract and will need to be assessed using a *bespoke firmness methodology*. Whilst Stanwell and Engie submitted that the initial intent and design of the RRO is conflicting with retail supply agreements, the AER considers the final version of the Rules have not excluded spot pass through contracts from being *qualifying contracts*.

In relation to the firmness factor of a spot pass through contract, Flow Power submitted that by using spot pass through contracts, *liable entities* are perfectly managing their exposure to spot prices by matching the price paid for each megawatt hour from the wholesale exchange to the selling price of each megawatt hour to customers. As there is no exposure, the firmness should be 1. By contrast, Powershop suggested that if a retailer offers spot pass through contracts they should hold the responsibility of managing their obligations under the RRO. A retailer offering spot pass through contracts can manage this liability by either purchasing *qualifying contracts* like any other *liable entity* or structuring their contracts with end users so they are incentivised to manage their demand in the gap periods.

Having considered the submissions, the AER is of the view that if *liable entities* use spot pass through contracts as *qualifying contracts*, they must be matched with a demand

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<sup>10</sup> Rule 11.116.8(d)(2)

response arrangement to have a firmness factor higher than zero. The *liable entity* will not be able to rely on electricity derivatives or contracts entered into by the customer to manage their own risk to spot prices. When firmness adjusting a spot pass through arrangement, the *liable entity* must have regard to the likelihood the customer will engage in demand response to manage risk. This will need to be considered as part of a *bespoke firmness methodology* to be developed by *liable entities* and signed off by an auditor. Detailed guidance on this has been set out in the Guidelines.

## 2.14 Auditors Panel

Rule 4A.E.4(b) requires that a *bespoke firmness methodology* for a *non-standard qualifying contract* must be approved by an *Independent Auditor*. The *Auditors Panel of Independent Auditors* is to be established and maintained by the AER.<sup>11</sup> Snowy Hydro raised concerns that auditing will be an additional cost of the RRO, however most stakeholders were concerned with equipping the audit panel with sufficient skill and establishing the panel in a timely manner.

Stakeholders advocated for auditors on the panel to have sufficient experience and expertise in the following areas: energy derivatives and energy contracts, understanding of how the market operates, detailed knowledge of and capability in interpreting market Rules, thorough understanding of different types of generation, understanding of physical curtailment and technical expertise relating to likely output/planning data of greenfield sites.

The AER agrees with stakeholders that the primary concern is to ensure that *Independent Auditors* have sufficient qualifications and experience to carry out their functions under the Rules. To reflect this, we have provided additional detailed guidance in the form of an Auditor Handbook. The purpose of the Auditor's Handbook is to provide guidance to persons on how they can apply to be on the *Auditors Panel* and what skills and experience an *Independent Auditor* should have. In addition to the Auditor's Handbook, the AER has also provided, in the Guidelines, guidance to auditors on the assessment of *bespoke firmness methodologies*.

AGL proposed that in addition to the Guidelines, to assist in the development of an appropriately skilled audit panel and transition to the operation of the RRO, the AER should allocate resources to ensure ongoing questions regarding *firmness methodologies* can be resolved in an efficient manner. The AER intends to support *Independent Auditors* and promote understanding over how to audit *bespoke firmness methodologies* and firmness factors.

Powershop suggested that auditors should hold a current Australian Financial Services License with a provision for providing general financial product advice in financial derivative products. The AER considers that *Independent Auditors* are responsible for securing the requisite licenses associated with their service offerings, and this is reflected within the Guideline.

Stakeholders sought clarification on the timing of auditor approval, and when *Independent Auditors* could be engaged. Stanwell raised a concern that requiring sign off on application

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<sup>11</sup> Rule 4A.E.5

of pre-agreed methodologies will place a sizeable burden on industry in the two months between T-1 and the *reporting day*. To provide clarification, auditor sign-off by an *Independent Auditor* can occur at any time between T-3 and T-1 when the *qualifying contracts* are being entered into. Therefore *liable entities* should seek to manage their portfolio and utilise the time between T-3 and T-1 to ensure that contracts are signed off by an *Independent Auditor* prior to the *contract position day*.

## 2.15 Net Contract Position (NCP)

*Liable entities* are required to submit their *net contract position* in megawatts and expected maximum demand for each *gap trading interval*, where the expected maximum demand is the *liable entity's* likely share of the *one-in-two year peak demand forecast* at the time of the *forecast reliability gap period*.<sup>12</sup> Stakeholder submissions sought clarification on several issues relating to *NCP reports* to be submitted by *liable entities*.

Stanwell requested that a number of corrections be made to the NCP examples in the draft Guidelines. First that the Guidelines should clarify that the expected maximum demand is not based on the NCP, but that the NCP is based on the expected maximum demand.<sup>13</sup> Second, that the reported maximum demand should simply be the retailer's forecast of maximum demand, which is the demand that a retailer would normally be hedging to. In response to these two points, the AER does not have the ability to amend the wording of the Rules.

Stanwell also sought clarification of Table 8.3 of the draft Guideline, and whether each line item represented the net position. The AER has clarified this guidance. The Guidelines now provide that contracts which decrease a *liable entity's* exposure to the spot market risk should be listed with a positive MW value in the *NCP report*, and negative value if the contract increases the *liable entity's* exposure. In the example at Table 8.3, there are two items listed; 'Quarterly base swap (bought)' and 'Quarterly base swap (sold)'. Both lines represent swaps with the same firmness and for the same trading intervals. The first line labelled 'bought' is for purchased swaps which decrease the *liable entity's* exposure, whilst the second labelled 'sold' is for swaps the *liable entity* has sold and hence increases their exposure. As such, purchased and sold swaps are listed separately. The example has also been clarified in the Guidelines.

Both Origin and Stanwell have submitted that, in lieu of supporting a simple compliance process, director sign-off may not be pragmatic. As director certification of a *NCP report* is stipulated in the Rules,<sup>14</sup> the requirement cannot be amended or removed by the AER.

Stanwell queried how Unaccounted for Energy (UFE) as part of the Global Settlement rule change would be considered when determining compliance with the RRO. The AER is still in the process of considering whether and how UFE will be accounted for in determining *liable share*. The AER intends reflect AEMO's of what is to be included or excluded when determining *liable share* and compliance with the RRO.

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<sup>12</sup> Rule 4A.F.3 provides for how a *liable entity's one-in-two year peak demand* is to be calculated.

<sup>13</sup> Rule 4A.E.6(b)

<sup>14</sup> Rule 4A.E.3(c)(1)