



For Consultation - Draft Interim Market Liquidity Obligation Guideline

Retailer Reliability Obligation

April 2019

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1 Public consultation

At the 26 October 2018 COAG Energy Council meeting, Ministers agreed that the Energy Security Board (ESB) will progress development of draft National Electricity Law (NEL) amendments that would give effect to a Retailer Reliability Obligation (RRO).

The ESB was tasked to develop the National Electricity Rules (NER) necessary to implement the Obligation. The draft Rules were published for stakeholder consultation on 8 March 2019. The final Rules are proposed to commence on 1 July 2019.

As set out in the Rules, the Australian Energy Regulator (AER) is responsible for developing a number of Guidelines on certain aspects of the RRO. Due to timing constraints the Rules specify that the AER will develop a number of interim guidelines which will be in place for one to two years. During this time the AER will run a full consultation process to develop final guidelines.

The AER's guidelines consultation process is set out in Table 1.1 below.

Table 1.1 Guideline consultation process

| | Consultation on interim | Final Interim | Final guideline |
|---|--------------------------|-------------------------|------------------|
| Reliability Instrument Guideline | April 2019 | 31 July 2019 | 31 July 2020 |
| Market Liquidity Obligation Guideline | April/May 2019 | 31 August 2019 | 31 December 2020 |
| Contracts and Firmness Guideline | May 2019 | 31 August 2019 | 31 December 2020 |
| Forecasting Best Practice Guideline | May/June 2019 | 30 September 2019 | 30 November 2020 |
| Opt-in Guideline | Late 2019/early 2020 TBC | No interim arrangements | 30 June 2020 |
| Reliability Compliance Procedures and Guidelines | Mid 2020 | No interim arrangements | 31 December 2020 |

1.1 Draft Interim Market Liquidity Obligation Guideline - consultation

The AER is seeking feedback on the Draft Interim Market Liquidity Obligation Guideline. Due to the tight timeframes we request submissions to be provided by 10 May 2019.

Submissions can be sent to RRO@aer.gov.au with the following title in the email: For consultation - Draft Interim Market Liquidity Obligation Guideline. Submissions received will be made available on the AER's website (www.aer.gov.au).

We prefer that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested. Parties wishing to submit confidential information should:

- clearly identify the information that is the subject of the confidentiality claim;
- and provide a non-confidential version of the submission in a form suitable for publication.

We will place all non-confidential submissions on our website. For further information regarding our use and disclosure of information provided to us, see the ACCC/AER Information Policy (June 2014), which is available on our website.

The remainder of this document is the guideline we are consulting on, the section above is included to provide an overview of the RRO work program the AER will be consulting with stakeholders on.

2 Overview

This document is an interim guideline produced in accordance with National Electricity Rules (Rules) Rule 11.115.10 regarding the Market Liquidity Obligation (MLO). A final guideline will be developed following the *Rules Consultation Procedures* by 31 December 2020. The MLO is a market making requirement designed to facilitate transparency and liquidity in the trading of electricity futures contracts relating to a forecast reliability gap. The MLO operates between T-3 and T-1 when the RRO is triggered and provides a source of qualifying contracts for liable entities to purchase to help meet their RRO contracting requirements. Parties obligated under the MLO are required to post bids and offers, with a maximum spread, on an approved exchange for standardised products that cover the period of the gap.

This guideline is intended to assist *MLO groups*, *MLO generators* and *MLO nominees* to understand how the AER will exercise its functions in relation to the operation of the MLO as part of the Retailer Reliability Obligation. This guideline does not constitute legal or other professional advice. Participants should obtain professional advice for specific concerns.

2.1 Purpose of this guideline

The AER aims to work with National Electricity Market (NEM) participants to maximise their compliance with their obligations under the national energy framework. The purpose of this guideline is to inform relevant participants of our approach to the relevant obligations, including monitoring and enforcing compliance with the Rules regarding the participation, conduct and operation of the MLO by *MLO groups*, *MLO generators* and *MLO nominees*.

If the Retailer Reliability Obligation is triggered at T-3, the Rules require the obligated parties in the relevant *region* to commence making bids and offers for *MLO products* on the *MLO exchange* within five business days. These bids and offers must meet certain parameters in terms of parcel size, bid-offer spread and trading windows each trading day.

The South Australian Government has proposed amendments to the National Electricity Law that would allow the South Australian Energy Minister to declare a T-3 *reliability instrument* in the South Australia *region*. The AER is monitoring the developments of South Australia's amending legislation, but it is possible this interim guideline will apply if the South Australian Energy Minister declares a T-3 *reliability instrument* following the publication of the Final Interim MLO Guidelines.

2.2 Roles and functions of the AER

The AER has a range of roles in the RRO process which are outlined in Part 2A of the NEL and 4A of the NER.

Our roles and functions for the RRO include:

- Creation of six guidelines including¹:
 - .1. Reliability Instrument Guideline
 - .2. Market Liquidity Guideline
 - .3. Contracts and Firmness Guideline
 - .4. Forecasting Best Practice Guideline
 - .5. Opt-in Guidelines
 - .6. Reliability Compliance Procedures and Guidelines
- Decision to make or not make a reliability instrument
- Monitoring of the Market Liquidity Obligation
- Approval of bespoke firmness methodologies
- Decision to approve or reject an application to adjust a net contract position
- Large customer opt-in process and approval
- Compliance

2.3 Definitions and interpretation

In this guideline the words and phrases presented in *italics* have the meaning given to them in the Rules.

¹ Due to timing constraints the Reliability Instrument Guideline, MLO Guideline, Contracts and Firmness Guideline and Forecasting Best Practice Guideline will be developed as interim guidelines for operation in 2019 and 2020.

3 The Market Liquidity Obligation

This section outlines the process for identifying parties obligated to perform the MLO, the AER's responsibilities in establishing the *MLO register*, and the information *Market Generators* are required to provide the AER to assist in the development and maintenance of the *MLO register*.

3.1 Triggering and duration of the liquidity period

If a T-3 *reliability instrument* is made, under Rule 4A.G.16(a) obligated parties (being *MLO generators* or *MLO nominees*) under the MLO are required to commence market making after five business days in the affected *region*, provided there is more than one *MLO group* in the *region*.

Obligated parties are required to post bids and offers for *MLO products* on an approved *MLO exchange* for the duration of the *liquidity period* (the period during which a liquidity obligation is in effect with respect to a *forecast reliability gap*).

Once the *liquidity period* has commenced, Rule 4A.G.16(d) requires the MLO to operate until:

- the T-1 cut-off day for the relevant *forecast reliability gap*;
- the date AEMO publishes a notice under clause 4A.C.5(a)² (notification of a closed forecast reliability gap at T-1);
- the date the AER updates the *MLO register* to indicate there are less than two *MLO groups* in the relevant *region*;
- the date there is no current *MLO exchange* in respect of the relevant *region*; or
- the date that all *MLO products* are no longer permitted to be bought and sold on any *MLO exchange* in the relevant *region*.

It is expected that the MLO will typically operate for approximately two years between T-3 and T-1 for a given reliability gap period.

Our approach

The AER will notify the obligated parties in the relevant *region* when a T-3 *reliability instrument* request is received from AEMO under Rule 4A.G.15(a). This provides obligated parties notice that the MLO may be triggered following the assessment of a *reliability instrument* request for a *region*.

Where the AER makes a T-3 *reliability instrument*, the AER will publish a notice of the date the *liquidity period* commences in the affected region under Rule 4A.G.16(b).

However, should the AER decide to not make a T-3 *reliability instrument*, it will notify the obligated parties of the decision in the relevant *region* as required by Rule 4A.G.15(b). To

² 4A.C.5(a) If the AER makes a T-3 reliability instrument and the *reliability forecast* in the *statement of opportunities* published in the second *financial year* following that T-3 reliability instrument shows that the *forecast reliability gap* is no longer forecast to occur, AEMO must provide written notice to the AER of that, and publish that notice on its website, *within 5 business days* of that *reliability forecast* being published.

ensure obligated parties are aware of developments concerning the MLO, the AER will provide notices to obligated parties directly via email to nominated contacts while also publishing a notice on the AER website.

Obligated parties should note that Rule 4A.G.16(c) states a *liquidity period* commences five business days after the reliability instrument takes effect, regardless of whether the AER has published a notice under Rule 4A.G.15(a). Under the Rules, the AER is also required to publish a notice on its website when a *liquidity period* ends under 4A.G.16(e).

3.2 Obligated parties under the MLO

3.2.1 MLO groups and MLO generators

Generation capacity will be traced to trading groups within each *region* (except for Tasmania³). As outlined in Rules 4A.G.4 to 4A.G.9, the process for allocating generation capacity will consider the holder of trading rights associated with generators with the trading group that owns or controls the output of any generator having that capacity allocated to the trading group. This process will also consider any controlling entity that may be able to influence or control a trading right holder.

Where a trading group's aggregate share of scheduled generation exceeds, on average, a 15 percent market share in the relevant region for the previous two quarters, the trading group will be designated a *MLO group*⁴. The specific *Market Generators* that have capacity traced and allocated to a *MLO group* will be a *MLO generator*⁵. For example, in South Australia, Torrens Island A & B generators would be assigned to AGL's trading group and designated as a *MLO group*. In this case, the Torrens Island A & B generators would be considered *MLO generators* within the AGL's *MLO group*.

The *MLO generators* within the *MLO groups* in each region are the obligated parties required to perform the MLO when a T-3 *reliability instrument* is made. Rule 4A.G.16(a)(2) states the MLO will only apply in a *region* where there is more than one *MLO group*. If, for example, a T-3 *reliability instrument* is made in a region and only one *MLO group* exists, the MLO will not apply unless a second *MLO group* is identified by the AER (e.g. a trading group expands its market share to greater than 15 per cent following the acquisition of or investment in new generation in the *region*).

Our approach

To establish the *MLO groups* and *MLO generators*, *Market Generators* will be required to provide information about their generation assets, including generation capacity, details of trading rights holders, and the controlling entities behind trading rights holders. This information will be used to develop the *MLO register*, which will outline the obligated parties in each region (see section 3.3). The process and specific details of the information required are outlined in section 3.3.2 of this document.

³ Under 4A.G.2(a) the MLO does not apply in the Tasmania *region*.

⁴ 4A.G.10

⁵ 4A.G.11

Once the AER has received the information from *Market Generators*, as per section 3.3.2, the AER will commence the process of tracing each parcel of capacity (in MW) from generators and applying them to respective *trading groups*. This process will be undertaken to verify the allocation of capacity provided by *Market Generators*.

As per Rule 4A.G.8(b)(1), the AER will consider the extent to which a controlling entity is able to influence or control a trading right holder that belongs to more than one trading group. The AER is proposing to do this on a proportional basis. For example, if a generator has entered into an arrangement where a percentage of its output is purchased and/or controlled by a trading right holder in another trading group, that percentage will be taken into account when allocating capacity between the trading groups.

Where a *Market Generator* provides information to the AER about the allocation of generation capacity under 4A.G.8(a) or (b), the allocation may be rejected and a substitute allocation may be determined by the AER. This may be undertaken in instances where the supporting information provided by the *Market Generator* failed to satisfy the AER of the existence of a proposed arrangement (i.e. the evidence provided lacks detail or is not verified with the other party to the arrangement).

The AER expects the process for development of the *MLO register* will follow the timing outlined below:

| Date | |
|-------------------------|--|
| 31 July 2019 | <i>MLO information template</i> published and issued to <i>Market Generators</i> . |
| 31 August 2019 | <i>Interim MLO Guidelines</i> published. |
| 1 September 2019 | <i>Market Generators</i> complete and deliver <i>MLO information template</i> to the AER. |
| 1 November 2019 | The AER publishes the <i>MLO register</i> under Rule 11.115.12 containing the information specified under 4A.G.12. |

As outlined in section 3.2.3, the ESB has proposed an alternative to the identification of the obligated parties in each *region* in the transitional Rules, where the parties would be deemed in the Rules for a period of two years.

3.2.2 MLO nominees

Rule 4.A.G.20 allows an *MLO generator* to appoint a *MLO nominee* to perform the MLO on its behalf. This may be preferable for a series of separate *MLO generators* within a *MLO group* to centralise the performance of the obligation with one party across the portfolio.

Where a *MLO generator* intends to appoint a *MLO nominee*, it must advise the AER, in writing, in order to register the nominee. Rule 4A.G.20(c) stipulates that the *MLO generator* remains wholly responsible for the performance of the MLO, notwithstanding the appointment of the nominee.

Any *MLO nominees* will be identified on the AER's *MLO register*.

3.2.3 Deemed MLO groups

In the ESB's *RRO Draft Rules Consultation Paper*, the ESB proposed an alternative to identifying obligated parties through a process of tracing generation capacity to *MLO groups*. Instead, the obligated parties would be specified in the transitional Rules for the first two years of the operation of the RRO from 1 July 2019 to 1 July 2021. It is also proposed the AER would be given the ability to alter the list of the obligated parties to allow for adjustments during the two-year deeming period.

The implementation of the deeming approach would defer the application of the *MLO generator*, *MLO group* and *MLO nominee* approach to identifying obligated parties outlined in sections 3.2.1 and 3.2.2, as well as the publication and issuing of the *MLO information template* (see section 3.3.2).

The ESB has proposed it will prepare an initial assessment of which *Market Participants* should be deemed in the transitional Rules, with *Market participants* then being invited to comment on the proposed obligated parties. A final list would then be published by the ESB for inclusion in the transitional Rules.

Our approach

The ESB is yet to take a final decision on the deeming approach to obligate parties for the performance of the MLO. Therefore, it is not clear how the AER's ability to alter the parties on the deemed list will operate.

If the ESB adopts the deeming approach, for the duration of the deeming period, the AER is proposing that any changes requested to the deemed parties, be that removing or adding parties to the deemed list, will be considered using the information published with the deemed list. That is, any capacity figures (in MW) used by the ESB to determine market share for the purposes of deeming will also be used by the AER when considering any request from a *Market Generator* to change the status of a deemed party.

The AER is proposing that following a decision to change the status of an obligated party on the deemed list (e.g. the obligated ceases to apply to one party and another takes it on), the AER will publish a *MLO register* on its website of the deemed parties for that region.

This approach would be used in lieu of the updating the *MLO register* process outlined in section 3.3.1 in this document.

3.3 MLO register

Rule 4A.G.12(a) requires the AER to establish, maintain and publish a *MLO register* on its website, and Rule 11.114.12 requires the register to be established by 1 November 2019. The *MLO register* will, among other things, identify the *MLO generators* within the *MLO groups* in each NEM *region* that will perform the MLO. Under 4A.G12(b) of the NER, the *MLO register* must identify, for each region:

- each *Market Generator*;
- the generator capacity of each *Market Generator*;

- each trading right holder of each *Market Generator*;
- the trading rights held by each trading right holder;
- each trading group;
- the allocation of each parcel of a *Market Generator's* traced capacity to a trading group;
- the trading group capacity of each trading group;
- the proportion that the average trading group capacity of each trading group at the end of the two preceding quarters, bears to the average aggregate trading capacity of all trading groups in that region at the end of the two preceding quarters;
- each *MLO generator*;
- each *MLO group*;
- each *MLO nominee* and its appointing *MLO generator*.

Our approach

The AER will publish the MLO register on 1 November 2019 as required under Rule 11.114.12. The AER will update the register at the beginning of each quarter or within five business days of being made aware the *MLO register* is no longer correct e.g. where a *Market Generator* is sold, or the trading rights associated with a *Market Generator* have changed.

When preparing the *MLO register* for each *region*, the AER will take into account any generator notices of closure. For example, if a notice of closure is published for a generator stating it intends to exit at the end of the 2022/23 financial year, the *MLO register* for that *region* will remove the capacity of that generator for the relevant *MLO group* from the time after which the closure would apply. This will ensure obligated parties are not required to offer contracts against generation that will exit the market prior to the period covered by the contracts. In some instances, this may result in an *exit notice* if the closure results in the *MLO group* falling below the 15% threshold.

However, in the above example, the *MLO register* would clarify that the *MLO group* would have the generation capacity assigned to it for the purposes of any reliability gap that occurred in the 2022/23 financial year, and would therefore still be obligated to perform the MLO over that period.

This approach will require the *MLO registers* to uniquely identify the obligated parties for all timeframes in the future (e.g. in different financial years) accounting for upcoming generator exits.

If the ESB adopts a deeming approach to identifying obligated parties, it is anticipated the *MLO register* will only need to be established either to publish a decision by the AER to change the status of one or more obligated parties, or prior to the end of the deeming period to identify obligated parties going forward.

3.3.1 Updating the MLO register

A *Market Generator* can apply to the AER for a determination if it considers the information relating to it on the *MLO register* is no longer correct. For example, where a *MLO generator* is sold to another company, and as a result, the *MLO group* falls below the 15 per cent threshold required to perform the obligation. Conversely, a *Market Generator* may apply to be included as part of a *MLO group* following a purchase by the trading group, as the trading group may now exceed the 15 percent threshold to perform the MLO in the *region*. Specifically, a *Market Generator* may apply for a determination under Rule 4A.G.14(a):

- that it is, or is not, a *MLO generator*;
- that its trading right holder is, or is not, a member of a trading group; and
- of how one or more parcels of its traced capacity should be allocated.

Our approach

Any requests for changes to the status of a *MLO generator* that affect an *MLO group* must be made in writing to the AER, and be supported with appropriate evidence. For example, if a market generator were to be sold, the evidence for the pending transaction may be provided by way of a memorandum of understanding between the two parties that outlines:

- the details of the generator (including scheduled generation capacity);
- the purchaser(s) of the generator;
- the seller(s) of the generator;
- the date ownership and control of the generator is transferred;
- the identity of each of its trading right holders;
- the trading rights held by each of its trading right holders; and
- the identity of the ultimate controlling entity of each of its trading right holders.

In a situation where the trading rights or output of a generator were to be sold to another party (but ownership doesn't change) the details of this arrangement must be provided as per the example above (where applicable). Additional details that would be required include:

- the new entity that controls the output of the generator;
- how much output is being sold under the terms of the arrangement (e.g. 80% of output purchased by entity A); and
- the term of the arrangement.

When an application is received, the AER will publish a notice on the website that the application has been received and is being considered as per Rule 4A.G.14(b). The AER may request additional information from the applicant in order to decide on the application.

Following the assessment of the application, the AER will update the *MLO register* if it is satisfied that:

- a *Market Generator* is no longer a *MLO generator* for a *region*;
- a *trading group* is no longer a *MLO group* for a *region*;

- a new *trading group* is taken to be a *MLO group* for a *region*; or
- the *trading group capacity* of *trading group* has changed.

Upon making its decision in respect of an application, the AER will notify the *Market Generator* of the outcome and publish a notice on its website advising the outcome within five business days.

Where an application is successful and requires the *MLO register* to be updated during a *liquidity period*, such as where an obligated party will no longer be obligated to perform the MLO, the AER will issue an *MLO exit notice* as per Rule 4A.G.12(e). The obligated party will be required to continue performing the MLO until the date specified in the *MLO exit notice*.

As per Rule 4A.G.12(e)(2), the date specified in the *MLO exit notice* must be the later of:

- if immediately prior to the time the *MLO exit notice* is issued there are three or more *MLO Groups* in the relevant *region*, the day that is one business day after the date of the *MLO exit notice*; or
- if immediately prior to the time the *MLO exit notice* is issued there are two *MLO Groups* in the relevant region and the AER is not issuing notice under paragraph (f)⁶, the day that is one business days after the date the notice is issued; or
- if immediately prior to the time the *MLO exit notice* is issued there are two *MLO Groups* in the relevant region and the AER is issuing a notice under paragraph (f), the day immediately before the day specified in the *MLO entry notice* under paragraph (g)⁷.

If the AER determines that a party previously not obligated to perform the MLO in a region has become an obligated party due to changes in generator market shares (whether through sale or other arrangements), the AER will issue a *MLO entry notice*. During a liquidity period, an obligated party is required to commence performing the MLO from the date that is 10 business days after the date the notice is issued.

The ESB is yet to make a decision on the approach of deeming obligated parties in the final Rules. It is anticipated that any changes to the deemed parties will be made to the AER, requiring the development of the *MLO register* (if one doesn't already exist). As outlined in 3.2.3, if the ESB adopts the deeming approach, for the duration of the deeming period, it is proposed that any changes requested to the deemed parties (e.g. the additional or removal of parties from the list), will be considered using the information published with the deemed list.

3.3.2 Market generator information

To assist with the establishment of the *MLO register*, under Rule 4A.G.13(a) each *Market Generator* must provide the AER with the following information:

⁶ 4A.G.12(f) states: "If, as a result of updating the *MLO register* under paragraph (c), a *trading group* is taken to become a *MLO group* for a *region*, then the AER must notify each *MLO generator* which has a parcel of traced capacity allocated to that group on the same day that it publishes the relevant update to the *MLO register*."

⁷ 4A.G.12(g) states: "If the AER issues a notice to a *MLO generator* under paragraph (f) ("*MLO entry notice*") during a *liquidity period*, then that *MLO generator* must comply with the liquidity obligation in respect of the parcel of its traced capacity allocated to the relevant *MLO group*, on and from the date that is 10 business days after the date the notice is issued."

- the *scheduled generating units* in relation to which it is a *Market Generator*;
- its generator capacity;
- the identity of each of its trading right holders;
- the trading rights held by each of its trading right holders;
- the trading group to which each of its trading right holders belongs;
- the identity of the ultimate controlling entity of each of its trading right holders;
- the allocation of its traced capacity to one or more trading groups;
- the trading group capacity of each trading group to which each of its trading right holders belong; and
- any traced capacity for which it has appointed a *MLO nominee* to discharge, and the identity of that *MLO nominee*.

Our approach

All *Market Generators* will be required to provide this information through the AER's RRO portal. If, for any reason, the RRO portal is unavailable, the AER will publish an *MLO information template* in accordance with Rule 11.115.11 and provide *Market Generators* with the template to provide the information outlined above. The timeframes to complete and provide the requested information will be outlined at the time the request is made.

The initial information needed for the establishment of the *MLO register* will need to be provided to the AER by 1 September 2019 (see section 3.3.1). Follow-up requests for additional or clarifying information from *Market Generators* will be responded to within 10 business days per request.

Rule 4A.G.13(a)(2) requires *Market Generators* to provide the AER with any supporting information requested by the AER for the purposes of determining that information provided by *Market Generators* under Rule 4A.G.13 is correct.

If a *Market Generator* becomes aware the information previously provided to the AER under this requirement is no longer correct, Rule 4A.G.13(a)(3) requires the *Market Generator* to notify and update the AER with the correct information within 10 business days of a change event. A change event would be an event or series of related events that results in the information previously provided under 4A.G.13 to be no longer correct or results in a change to the allocation of capacity under rule 4A.G.8 (e.g. a change to the holder of the trading rights for a generator).

The AER will use information gathered through this process in the course of carrying out its other duties in line with the ACCC/AER Information Policy.⁸

⁸ <https://www.accc.gov.au/system/files/ACCC-AER%20Information%20Policy.pdf>

4 Performing the Market Liquidity Obligation

This section outlines the details relating to the performance of the MLO, including the products to be offered, the trading facility the products must be offered through, bid-offer spreads, exemptions to the obligation, and the AER's role in approving additional products or exchanges.

4.1 MLO products

The RRO builds on existing spot and financial market arrangements in the NEM to facilitate investment in dispatchable capacity and demand response. It is designed to incentivise retailers to support the reliability of the power system through their contracting and investment decisions.

The MLO is intended to address stakeholder concerns about liquidity and transparency of contract markets. To further the objectives of the RRO, the products offered through the MLO will be firm financial contracts offered through an approved exchange. This has the dual benefit of assisting purchasers of the contracts in meeting their contracting obligation under the RRO, while also incentivising *MLO groups* to invest in dispatchable capacity.

Rule 4A.G.22 specifies that a *MLO product* is an electricity futures contract which:

- has a contract unit of either:
 - 1 MW of electrical energy per hour based on a base load period, being from 00:00am hours Monday to 24:00pm Sunday (in the relevant region) over the duration of the contract period; or
 - 1 MW of electrical energy per hour based on a peak load period, being from 07:00am hours to 10:00pm hours (in the relevant region) Monday to Friday (excluding public holidays) over the duration of the contract period, provided that, if the trading intervals identified in the relevant forecast reliability gap apply only during parts of a day, then the contract unit must include those trading intervals; and
- satisfies each of the following criteria:
 - it is a contract relating to electrical energy bought and sold in the region in which the forecast reliability gap has been identified;
 - the contract period is monthly or quarterly, provided the contract period covers all of the trading intervals identified in the relevant forecast reliability gap, in that month or quarter;
 - the maximum contract unit is 1 MWh;
 - the contract price is quoted in AUD per MWh; and
 - the contract quantity is for an identical contract unit in each trading interval.

Our approach

When the RRO commences, the AER will accept the following products as MLO products:

- ASX Baseload futures;

- ASX Peak load futures; and
- ASX \$300 caps.

All the above products must be traded on the approved *MLO exchange*. The obligated parties have discretion as to what combination of the above products are offered in meeting the obligation, provided the products cover the period of the reliability gap.

The AER will establish, maintain and publish a register of each MLO product by 1 October 2019, as per Rule 11.114.13.

4.1.1 Approval of additional MLO products

The Rules provide the AER with the authority to approve additional *MLO products*. This includes products that do not satisfy the criteria outlined in the Rules (reflected in section 4.1). This provides for continued innovation of exchange-traded products over the longer term.

Our approach

When considering a request for additional *MLO products*, the AER will have reference to the following criteria:

- the firmness of the product as per the principles stipulated in the Contracts and Firmness guideline;
- the availability of the product on the exchange (for new or emerging exchange-traded products);
- the traded volume of the product; and
- the coverage of the product in relation to a reliability gap period.

MLO groups can approach the AER to consider the approval of additional *MLO products*. Any application must make the case for the approval of the additional *MLO product* with reference to the above criteria and how the product will benefit liable entities seeking to contract for the reliability gap period.

At this time, the AER is not proposing any additional *MLO products*.

4.2 The MLO exchange

A *MLO exchange* is a trading facility that is approved by the AER in order to facilitate the trading of *MLO products*. The transitional Rules provide for the ASX24 to be designated as a *MLO exchange* from the commencement date unless the AER determines otherwise (11.115.14). To avoid any confusion, the ASX24 will be the *MLO exchange* when the RRO Rules commence.

4.2.1 Approval of MLO exchanges

Rule 4A.G.23 provides the AER with the authority to consider applications from persons for a trading facility that it owns, operates or controls and approve and designate *MLO exchanges* to be used by obligated parties in meeting their obligations under the MLO.

Our approach

When considering an application for a MLO exchange, the AER will consider the following criteria, as per Rule 4A.G.23(d):

- one or more *MLO products* are able to be bought and sold on the trading facility;
- the trading facility has an adequate volume of trading and diversity of participants;
- the rules of the trading facility include (or will include) appropriate rules to allow *MLO generators* to perform a liquidity obligation;
- the trading facility has appropriate credit and prudential arrangements;
- the costs and ease of trading on the trading facility are reasonable;
- the AER has a reasonable expectation that the relevant *MLO products* will be traded on the trading facility;
- the operator of the trading facility can provide relevant trading data to the AER when requested, for the purposes of monitoring compliance.

Where the AER receives an application for a trading facility to be considered a *MLO exchange*, the AER may prepare a discussion paper and undertake a public consultation process to seek feedback from stakeholders on the above criteria.

Rule 4A.G.23(f) requires the AER to carry out annual reviews of each *MLO exchange* and consider whether the exchange is meeting the criteria set out above. In undertaking this review, the AER will engage with the *MLO exchange* and advise the review has commenced. Where necessary, the AER may seek information from the *MLO exchange* to support the review. Any requests for information will be made in writing and timeframes for responses will be included in the correspondence.

The AER may revoke the approval of any exchange if it determines the trading facility is no longer satisfying the criteria in this section.

The AER will establish, maintain and publish a register of approved *MLO exchanges*.

4.3 Trading periods

To perform the MLO, the *MLO generators* must post bids and offers for *MLO products* on a *MLO exchange* during the following trading periods:

- 11.00am to 11.30am (Sydney time); or
- 3.30pm to 4.00pm (Sydney time).

The Rules provide flexibility under 4A.G18(a) for the *MLO exchange* to nominate two other 30 minute periods for trading to take place.

MLO generators must perform the MLO for at least:

- 25 trading periods in each of December and January; and
- 35 trading periods in each other month.

Our approach

The AER will engage with the *MLO exchange* to discuss any proposed change to trading periods for the MLO to understand the potential benefits or drawbacks of making the change.

If the *MLO exchange* ultimately nominates two other 30 minute periods for the trading to occur, the AER will provide details of this change on the *MLO register*.

4.4 Bids, offers and volumes

4.4.1 Queensland, New South Wales and Victoria

Where the MLO applies in Queensland, New South Wales or Victoria, the *MLO generator* must offer simultaneously to buy and sell 5 MW of *MLO products* that cover the forecast reliability gap period, as outlined in the T-3 *reliability instrument*, on an *MLO exchange*.

The *MLO products* offered must be either accepted or available for at least 25 minutes during the trading period on the *MLO exchange*.

The bid-offer spread for baseload and peak load contracts is the higher of 3% or \$1 per MWh. The bid-offer spread for a cap contract is the higher of 10% or \$1 per MWh.

An *MLO generator* will be taken to have complied with the MLO in respect of a parcel of traded capacity if in a single trading period the aggregate *MLO group* transactions of the *MLO group* to which that traced capacity is allocated of *MLO products* exceed 5 MW.

4.4.2 South Australia

Where the MLO applies in South Australia, the *MLO generator* must offer simultaneously to buy and sell 2 MW of *MLO products* that cover the forecast reliability gap, as outlined in the T-3 *reliability instrument*, on an *MLO exchange*.

The *MLO products* offered must be either accepted or available for at least 25 minutes during the trading period on the *MLO exchange*.

The bid-offer spread for baseload and peak load contracts is the higher of 5% or \$1 per MWh. The bid-offer spread for a cap contract is the higher of 10% or \$1 per MWh.

A *MLO generator* will be taken to have complied with the MLO if in a single trading period if the aggregate *MLO group* transactions of the *MLO group* to which the traced capacity is allocated transactions of *MLO products* exceeds 2 MW.

4.5 Meeting the obligation

In all *regions* where the MLO applies, a *MLO generator* is not required to perform the obligation in relation to a parcel of traced capacity allocated to a *MLO group* if:

- in a liquidity period if, during that liquidity period the aggregate *MLO group* transactions of that MLO group exceeds 10% of the *MLO group's* trading group capacity for the relevant region, as per Rule 4A.G.19(a); or

- in a quarter if, during that quarter, the aggregate *MLO group* transactions of that *MLO group* exceed 1.25% of the *MLO group's* trading group capacity for the relevant *region*, as per Rule 4A.G.19(b).

Our approach

Through the AER's monitoring where it is observed that an obligated party has met the above transaction thresholds in respect of a *region* during a *liquidity period*, the obligated party will be considered to have met the obligation for the relevant quarter or *liquidity period*, respectively.

As outlined in section 3.3, the *MLO register* may have to distinguish between obligated parties over different timeframes. Where a notice of closure is published for a generator, but the *MLO group* remains an obligated party, the respective 1.25% and 10% thresholds identified above will take account of the generator capacity applicable at that time.

The AER is proposing to notify obligated parties via a publication on its website that the obligation is considered to have been met for the current quarter or liquidity period within five business days of observing the obligated party meeting the transaction threshold.

The approved *MLO products* are generally traded as quarterly products. As obligated parties are required to make bids and offers for products that cover the reliability gap, where the gap covers more than one quarter (e.g. from 1 December to 31 March the following year), obligated parties will need to make offers for 5 MW of products in each of the two quarters of the gap in NSW VIC and QLD in each trading session. In South Australia, a total of 2 MW of products will need to be offered in each respective quarter of the gap in each trading session. Some MLO products may be available or offered with a monthly resolution as opposed to a quarterly basis. If the reliability gap is forecast for one entire quarter, and obligated parties choose to offer MLO products on a monthly resolution, 5 MW of products will need to be offered for each month covering the gap, therefore providing 5MW of coverage over the entire gap period, and not only part of the gap period. The same principle would apply in South Australia, except with a threshold of 2 MW.

4.6 Exemptions to performing the MLO

The Rules recognise there may be circumstances where an obligated party may not be able to carry out the obligation (4A.G.21). An obligated party is not required to perform the MLO in the following circumstances:

- if doing so would constitute a breach of sections 588G or 588V of the *Corporations Act 2001* (Cth) by:
 - (1) that *MLO generator*;
 - (2) an officer of that *MLO generator*;
 - (3) a member of the *MLO group* to which a parcel of that *MLO generator's* traced capacity has been allocated; or
 - (4) an officer of a company referred to in sub-paragraph (3);

- while it or its *MLO nominee* is suspended or prohibited from making bids and offers for *MLO products* on any *MLO exchange* in the relevant region, in accordance with the relevant rules of that *MLO exchange* or the *Corporations Act 2001* (Cth);
- while the trading of all *MLO products* is temporarily suspended on each *MLO exchange* in that *region*.

Our approach

In the course of its compliance monitoring, where the AER observes instances of non-compliance with the MLO, if obligated parties seek to claim the listed exemptions as a reason for non-compliance, the obligated party will be required to provide evidence to support the claim.

The AER has not proposed any additional circumstances where obligated parties will be exempted from performing the MLO.

5 Compliance

This section outlines the AER's approach to its compliance monitoring of the performance of the MLO by obligated parties.

Rule 4A.G.24 requires *MLO generators* to facilitate access to trading information from the *MLO exchange* to allow the AER to monitor compliance with the obligation.

The AER will seek to obtain trading information in a streamlined format directly from the *MLO exchange* to monitor compliance with the MLO. The AER will rely on the information from the exchange to make its own assessment and form a view as to the compliance of obligated parties. As part of this process, obligated parties may be asked to support requests from the AER to the *MLO exchange* in accessing the trading information from the *MLO exchange* the AER considers necessary to effectively monitor obligated parties' compliance with the obligation.

Our approach

The AER will monitor compliance of obligated parties with the MLO following the making of a T-3 *reliability instrument*. The AER will monitor, on the approved exchange:

- whether obligated parties have commenced making bids and offers after five business days of the T-3 *reliability instrument* taking effect;
- the *MLO products* being offered;
- the bid-offer spread;
- the number of trading periods/sessions bids and offers for products are made in each month;
- that offers are available for at least 25 minutes per session; and
- the aggregate traded volumes where an obligated party considers it has met the obligation for a given session, quarter or liquidity period (in respect of its capacity, where applicable).

When monitoring the performance of the MLO by obligated parties, the AER will take into consideration the frequency of instances of non-compliance with any of the above aspects of the obligation, regardless of whether that information is held by a trading rights holder, *MLO nominee* or an agent acting on the instructions of that *MLO nominee*.

Where the AER observes instances of non-compliance with the obligation, the AER will initially write to the obligated party and seek an explanation for the instance(s) of non-compliance, and what steps will be undertaken to rectify any issues and return to compliance. If the response from the obligated party is not to the satisfaction of the AER, the AER will consider enforcement action.

To avoid confusion, where a T-3 *reliability instrument* is made mid-month, the AER will use a pro-rata approach to monitoring of the minimum number of trading periods when the MLO applies in a *region*. The same approach will be taken where the MLO ends mid-month. The AER will actively monitor performance to ensure obligated parties commence performing the MLO after five business days when the MLO commences mid-month following the making of a T-3 *reliability instrument*.