



Gas industry RoLR exercise report

11 December 2015

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1 Background

1.1 National Energy Retail Law RoLR provisions

Under the National Energy Retail Law, the Australian Energy Regulator (AER) oversees the national Retailer of Last Resort (RoLR) scheme. The scheme is designed to ensure that in the event of retailer failure, customers continue to receive electricity and/or gas supply. The AER must publish RoLR guidelines and a RoLR Plan, appoint default RoLRs, seek expressions of interest from retailers to be additional RoLRs, maintain and publish a register of RoLRs, appoint designated RoLRs for specific RoLR events and make RoLR cost recovery scheme determinations.

The AER's RoLR plan provides for regular exercises to be carried out by the participants in the plan¹. The AER must publish a report on the conduct of RoLR exercises.²

1.2 Participants in the gas industry RoLR exercise

On 10 November 2015, the AER together with the Essential Services Commission of Victoria conducted a RoLR exercise for gas industry RoLR plan participants. The participants included retailers registered as RoLRs for gas customers, energy departments of participating jurisdictions, gas distributors, the Australian Energy Market Operator (AEMO) and energy ombudsman schemes. While participants based solely in Victoria are not covered by the Retail Law, Victorian gas distribution businesses chose to participate in the exercise. This report discusses those aspects of the joint exercise that occurred under the Retail Law framework, and not those aspects that occurred under the Victorian gas regulatory framework.

Participants were not required to attend at AER offices, but remained in their usual place of business, as they would in a RoLR event. The exercise was conducted primarily through emails from and to the AER's RoLR mailbox, AERRoLR@aer.gov.au, with follow up phone calls where necessary.

1.3 Purpose of the gas industry RoLR exercise

This report sets out the conduct and outcomes of the exercise. The exercise familiarised participants with the communication flows and RoLR documentation that would be used in a gas RoLR event, to:

- assist RoLR plan participants to better undertake their responsibilities during a RoLR event
- remind RoLR plan participants of their RoLR scheme obligations

¹ Section 162(2)(b) of the National Energy Retail Law.

² Section 163(a) of the National Energy Retail Law.

- clarify and seek feedback on the procedures that would be followed in a retailer failure event; and
- clarify and seek feedback on the documentation that would be used in a retailer failure event.

Participants in the exercise were requested to provide feedback to the AER by 17 November 2015. During and following the exercise, participants raised a number of issues and feedback on various aspects of the exercise. This feedback, and the AER's response, is discussed later in this report.

1.4 Scenario for the gas industry RoLR exercise

The scenario for the exercise involved the failure of a hypothetical second tier gas retailer, Infinite Gas Pty Ltd (Infinite Gas), which had customers in Queensland, New South Wales, the Australian Capital Territory, South Australia and Victoria. Its national market share averaged around 5 per cent. The failed retailer held a national retailer authorisation for gas and a Victorian gas retail licence.

In the scenario, AEMO issued a default notice to Infinite Gas in both the Short Term Trading Market (STTM) and the Declared Wholesale Gas Market (DWGM). AEMO subsequently issued a suspension notice to Infinite Gas in both the STTM and the DWGM. The AER then issued a RoLR notice.

The exercise addressed:

- the payment default procedure under the STTM and DWGM provisions in the National Gas Rules where a retailer fails to make a payment.
- the AER's contingency powers
- the process for appointing additional RoLRs as designated RoLRs
- the key decision making points and communication flows in the lead up to and after a RoLR event
- the content of a gas RoLR notice.

While the payment default procedure under the STTM provisions in the National Gas Rules is unlikely to provide sufficient time to appoint additional RoLRs with non-firm offers as designated RoLRs, the AER decided to include that process in the exercise. Additional RoLRs with non-firm offers were approached prior to the exercise, and invited to make offers for affected customers on distribution systems for which they had made non-firm offers.

Table 1 sets out the hypothetical failed retailer's customer base of 181,219 customers.

Table 1

	Customer numbers	Market share %
NSW	64094	5.32
ACT	3512	2.78
Queensland	1229	1.60
South Australia	17560	4.17
Victoria	94824	5.40

1.5 Sequence of the exercise

The sequence of the exercise was as follows:

1. Issue of default notices by AEMO

Infinite Gas failed to settle its monthly account for both the Declared Wholesale Gas Market and the Short Term Trading Market for the month of September 2015, which were both due at 12 noon on Wednesday 28th October 2015. This is a default event in each of the wholesale markets. At 2pm on Wednesday 28th October, AEMO issued Infinite Gas with two default notices: one for its default in the DWGM, and a separate default notice for its default in the STTM.

2. Issue of suspension notices by AEMO

Infinite Gas was unable to rectify the defaults set out in the default notices by the due date of 2pm on Thursday 29th October, and at 4pm on Thursday 29th October, AEMO issued two suspension notices, suspending it from the DWGM and the STTM, respectively. Suspension took effect at midnight of that day.

4. Issue of RoLR notice by the AER

Following the suspension of Infinite Gas from the STTM, on Friday 30th October, the AER issued a RoLR notice, as well as associated documents.

2 Communications and documentation covered by the exercise

Some communications by the AER are mandatory under the Retail Law and the AER's RoLR Plan. Other communications are discretionary and will depend on the circumstances of a particular retailer failure. The exercise addressed the following communications that the AER would generally provide during a gas RoLR event:

Day 1 in the scenario – Wednesday 28th October 2015 – following AEMO's issue of a default notice to a gas retailer:

- 1.1. Advice to Ministers (with energy department RoLR contacts participating in lieu of Ministers) and AEMO that the AER has formed a "reason to believe" under section 130(5) of the National Energy Retail Law that there is a risk of retailer failure, following the issuing of default notices for default events in both the STTM and the DWGM. Under the RoLR Plan, the AER will also notify energy departments of the 'reason to believe'.
- 1.2. Advice to retailers registered as additional RoLRs with non-firm offers that there is a risk of retailer failure. (This email was sent before the exercise, to allow sufficient time for the retailers to determine whether or not to firm up their offers). The email followed the issue of the default notices, and included load information on the retailer in distress. The AER sought the registered RoLRs' advice as to whether they were willing to be designated as a RoLR for any customers of the failed retailer. The email also addressed confidentiality obligations under section 131 of the Retail Law. Note: Non-firm offers were sought as, in jurisdictions that have applied the National Energy Customer Framework, there are non-firm offers for gas customers but no firm offers.
- 1.3. Two registered RoLRs with non-firm offers made offers to be designated for two of the affected gas distribution systems. (This email was sent before the exercise).
- 1.4. An email from the AER seeking advice from the registered RoLRs that were firming up their offers as to whether they thought they may need the AER to issue section 137 gas directions. (This email was sent before the exercise).
- 1.5. Confirmation from the two registered RoLRs that they did not consider at that stage that they would require gas directions to be issued. (This email was sent before the exercise).
- 1.6. Notification from the AER in accordance with section 132(4) of the Retail Law that the AER has accepted both offers made by registered RoLRs to be designated for two of the affected gas distribution systems. This email also included notification to retailers within that group of companies registered as default RoLRs that there is a risk of a retailer failure. The email sought advice as to whether or not the AER would need to make any section 137 gas directions in relation to the supply or transportation of gas for the customers of the failed retailer. The email also addressed confidentiality obligations under section 131 of the Retail Law.
- 1.7. Notification to retailers registered as default RoLRs that there is a risk of a retailer failure following the issue of a default notice. The email sought advice as to whether or not the AER would need to make any section 137 gas directions in relation to the supply or transportation of gas for the customers of the failed retailer. Where the

default RoLRs would not be required to perform the RoLR function, because the AER would be designating additional (ie, voluntary) RoLRs, this email advised of the AER's intention to appoint additional RoLRs. This email also addressed confidentiality obligations under s. 131 of the Retail Law.

Day 2 in the scenario – Thursday 29 October 2015 – following the retailer's failure to respond to the default notices by 2pm:

- 1.8. The AER advised Ministers and energy departments that Infinite Gas had failed to meet the requirements of both the default notice issued in the STTM, and the separate default notice issued in the DWGM, and that AEMO must now issue a suspension notice in each market. This email advised that suspension from a wholesale market triggers a RoLR event, and provided some information on the AER's next steps if a RoLR event occurred in the STTM.
- 1.9. Provision of appointment notices under s. 132(2) of the Retail Law to the additional RoLRs that were appointed by the AER as designated RoLRs. This email also advised RoLRs to notify the AER as soon as they become aware of any insufficiency in the gas supply or capacity available to them.
- 1.10. Provision of appointment notices to AEMO in accordance with the requirement in s. 132(2) of the Retail Law, and advice to AEMO that any customers not covered by the additional RoLR appointments should be transferred to the responsible default RoLRs.
- 1.11. Advice to default RoLRs that will be deemed to be appointed under s. 132(1) of the Retail Law that they will be designated RoLRs. This email also advised RoLRs to notify the AER as soon as they become aware of any insufficiency in the gas supply or capacity available to them.
- 1.12. Advice to other default RoLRs that they would not be required to act as default RoLRs as the AER has appointed additional RoLRs for the relevant gas distribution systems.
- 1.13. Advice to gas distributors that there is a risk of a retailer failure, advising which retailers will be appointed as designated RoLRs if a RoLR event occurs. Under the RoLR Plan, the AER may inform distributors and certain other persons of the designated RoLRs prior to the RoLR event. This email also addressed confidentiality obligations under s. 131 of the Retail Law, and sought confirmation from distributors that, if a RoLR event occurs, they would allocate the capacity available to the failed retailer to designated RoLRs.
- 1.14. Confirmation from gas distributors that the capacity of the failed retailer can be allocated to the designated RoLR.

Day 2 in the scenario – Thursday 29 October 2015 – following AEMO's issue of two suspension notices (STTM and DWGM) at 4pm:

- 1.15. The AER advised Ministers and Ombudsmen that AEMO had issued suspension notices to Infinite Gas in both the DWGM and the STTM, and that suspension would be effective from 12:00am Friday 30 October 2015. Some background information, including on affected customer numbers, load and designated RoLRs, was provided. Some information on the AER's communication strategy was provided. This email also noted that RoLR events in the DWGM are overseen by AEMO and the Essential Services Commission of Victoria.

- 1.16. Advice to relevant RoLR plan participants (retailers registered as RoLRs for gas customers and gas distributors) that AEMO had issued suspension notices to Infinite Gas in both the DWGM and the STTM, and that suspension would be effective from 12:00am Friday 30 October 2015. Information on customer numbers and designated RoLRs for each affected gas distribution system was provided. This email also noted that RoLR events in the DWGM are overseen by AEMO and the Essential Services Commission of Victoria.
- 1.17. Provision to individual RoLRs of a summary table of Infinite Gas's load and MIRN (customer connection) numbers for the month of September 2015 for their respective areas of responsibility, to assist them in preparing for the transfer of customers and understanding whether administered price caps may apply in the STTM.

Day 3 in the scenario – Friday 30 October 2015 - following the suspension of Infinite Gas from the STTM and DWGM with effect from 12:00am Friday 30 October:

- 1.18. Provision to Ministers and energy Ombudsmen of a copy of the AER's RoLR notice, a RoLR event questions and answers factsheet for customers of Infinite Gas, and some background information on the RoLR event.
- 1.19. Provision to gas retailers and distributors of a copy of the RoLR notice, and a RoLR event questions and answers factsheet for customers of Infinite Gas.

At the conclusion of the exercise

- 1.20. A final email seeking feedback on the communication flows and RoLR documents for clarity and comprehensiveness.

3 Feedback received from RoLR Plan participants on the exercise

The AER received feedback on the exercise and documents from each category of RoLR Plan participant: energy departments, energy Ombudsmen, registered RoLRs, electricity distributors and AEMO. The key feedback on the RoLR exercise was:

Participant feedback	AER Response
<p>Gas retailers of last resort noted the importance of receiving up-to-date load information of the failing retailer (in de-identified form) as early as possible, in order to advise the AER on whether or not they would need the AER to issue gas directions under section 137 of the Retail Law, and to assist them in planning and forecasting. They indicated that this information would need to be more current than the validated data available to the AER from the Market Information Bulletin Board, which is well over a month old by the time the AER receives it. Participants noted that up-to-date load data will not have been validated by AEMO.</p>	<p>The AER notes that load information is confidential information, and is unlikely to be released by AEMO directly to designated RoLRs until the failed retailer has been suspended from the wholesale gas market. However, Division 3 of Part 8 of the Retail Law enables the AER to disclose confidential information in certain circumstances. In an impending gas RoLR event, the AER will seek up-to-date (ie, unvalidated) load data from AEMO to provide to gas retailers of last resort. Any disclosures that the AER makes will be subject to conditions of confidentiality which retailers will need to agree to prior to receiving any load information. These conditions would include conditions limiting the retailer's use of the information to the anticipated RoLR event, and requiring the destruction of the information if a RoLR event does not eventuate.</p>
<p>When the AER first contacts registered RoLRs with non-firm offers to seek their advice on whether they are willing to be designated as RoLR for any customers of</p>	<p>The AER has amended its templates to ensure that section 137 gas direction issues are addressed in the AER's initial contact with</p>

the failed retailer, the AER should at this stage ask them to advise whether or not they require any section 137 gas directions to support their offer, rather than inquiring once an offer has been made.

additional and default RoLRs.

Gas retailers of last resort queried what measures might be used to gain visibility over the failed retailer's terms and pricing that would underpin a section 137 gas direction, and the timing around this.

Unless the failed retailer is willing to provide the AER with information on the terms and conditions of its gas supply and haulage contracts, the AER would need to use compulsive powers to obtain its contracts. Without the full cooperation of the failed retailer, it is likely to take some time for the AER to obtain the terms and conditions of the gas contracts, and, if necessary, to specify under section 137(6) of the Retail Law terms and conditions that better accord with those that prevail in the market. The AER is very unlikely to be in a position to make this assessment at the time of issuing the RoLR notice. An amendment to the RoLR notice to specify terms and conditions that better accord with prevailing market conditions may take some time.

The AER's notification to participants that a suspension from the STTM has occurred, and the AER's RoLR notice, should explain the term 'gas day'.

The AER agrees, and will explain the term "gas day" in its communications, and will define the term in the RoLR Notice. The AER will use the definition of "gas day" in rule 364 of the National Gas Rules.

RoLRs do not require information on the total number of MIRNs or load on a gas distribution system,

The AER is unable to provide an exact 'MIRN to customer' count, but will be able to draw on information provided to us

but information on the failed retailer's 'MIRN to customer count' would be useful. This information assists RoLRs to determine the number of accounts to set up and whether or not there are potentially large multi-site customers being transferred to them.

through our retail performance reporting RoLR. The AER receives customer count information from retailers on a quarterly basis, which is broken down by residential, small business and large gas customers. While this information will not be up-to-date at the time of any RoLR event, it should provide a reasonable indication of the breakdown of affected customers and the 'MIRN to customer' count.

When load and customer information is provided to RoLRs, it would be useful if the AER could also provide information on the commercial and industrial and mass market customer counts.

The AER is unable to provide up-to-date information on the commercial and industrial and mass market customer counts, but the information referred to above should assist RoLRs.

The "Frequently Asked Questions" advise customers that RoLRs will contact them within a month, however, the AER's RoLR Plan requires RoLRs to use best endeavours to contact customers within 25 business days.

The "Frequently Asked Questions" have been revised to advise customers that their RoLR will contact them within the next five weeks.

To provide transparency of the activities and notifications that would occur during a RoLR event, future RoLR exercises should be conducted as a round table forum with attendance from representatives across the industry. This would enable the AER to run through the full RoLR process with all participants aware of the activities. Many retailers are not registered RoLRs and have very little exposure

This report is designed to provide some transparency of the activities and notifications that would occur during a RoLR event. The AER will conduct a 'round table' style exercise at one of its future exercises. The AER will give consideration as to whether retailers that are not registered RoLRs should be required to attend. As retailers that are not registered RoLRs have fewer obligations in a RoLR event (such as cancelling customer

to RoLR processes so it is important to maximise the learning opportunity that RoLR exercises present.

transfers to the failed retailer, and advising the affected customers) it may be more effective for the AER to communicate these obligations to retailers that are not registered RoLRs when circulating its RoLR notice. Given the nature of these obligations, the attendance of non-RoLR retailers at RoLR exercises may not be necessary.

3.1 AER next steps

The AER has revised its RoLR processes and templates to address the feedback received from gas RoLR plan participants. The AER will consider the format of the next RoLR exercise, including whether to have gas and electricity specific exercises, or a combined exercise.

3.2 Further gas RoLR information

National Energy Retail Law:

[https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20\(SOUTH%20AUSTRALIA\)%20ACT%202011/CURRENT/2011.6.UN.PDF](https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20(SOUTH%20AUSTRALIA)%20ACT%202011/CURRENT/2011.6.UN.PDF)

AER RoLR Guidelines and RoLR plan: <https://www.aer.gov.au/retail-markets/retailer-failure>

AER RoLR email contact: AERRoLR@aer.gov.au

AEMO gas retail market procedures: <http://www.aemo.com.au/Gas/Policies-and-Procedures/Retail-Gas-Market-Procedures>