



19 August 2011

Tom Leuner
General Manager Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3000

Email: AERInquiry@aer.gov.au

Dear Mr Leuner,

RE: NATIONAL RETAILER OF LAST RESORT SCHEME

CitiPower and Powercor Australia (**the Businesses**) refer to the Australian Energy Regulator's (**AER**) Retailer of Last Resort (**ROLR**) *Notice of Draft Instruments* dated July 2011 (**the Notice**). In addition to the Notice, the AER has released three instruments which make up the draft ROLR package. These are:

1. The draft RoLR guidelines (**the Guidelines**), which ;
2. The draft RoLR statement of approach (**the Statement**); and
3. The draft RoLR plan (**the Plan**).

(Collectively the **ROLR package**)

The overall purpose of the ROLR package is to ensure that in the event of retailer failure customers continue to receive electricity supply. The Guidelines have been released in accordance with the National Energy Retail Law (**NERL**) and specify information on registration and appointment of the ROLR, and information on cost recovery for ROLR associated costs. The Plan outlines the procedures to be followed by participants in the event of a retailer failure. The Statement, while not required under the NERL, is intended to supplement the Guidelines by providing greater guidance in terms of the AER's approach on issues raised in the Guidelines.

The main issues which the Businesses will respond to are:

- ROLR registration and appointments;
- ROLR cost recovery; and
- ROLR plan.

REGISTERED OFFICE

40 Market Street, Melbourne VIC Australia Telephone: (03) 9683 4444 Facsimile: (03) 9683 4499
Address all Correspondence to: Locked Bag 14090, Melbourne VIC 8001 Australia
CitiPower Pty ABN 76 064 651 056 General Enquiries: 1300 301 101 www.citipower.com.au
Powercor Australia Ltd ABN 89 064 651 109 General Enquiries: 13 22 06 www.powercor.com.au

The Businesses appreciate the opportunity to comment on the guidelines and are supportive of the AER's general approach in providing the industry with guidance on the national ROLR scheme. The Businesses comments are set out in the sections to follow.

ROLR registration and appointments

The AER has set out objectives it will use to develop its ROLR Registration and Appointments framework in the Statement. The Businesses support the AER's objectives, in particular, the objective to ensure the continuity of payments to suppliers of distribution services and other ancillary energy service providers in the event of a retailer failure.

In addition, the Businesses are supportive of the criteria the AER will take into account in registering and appointing a ROLR. The Businesses agree with the AER's emphasis on the financial resources of the ROLR, and believe that the AER's power to procure bank guarantees is prudent. This will ensure that cascading retailer failures are avoided.

ROLR cost recovery

ROLR costs of the ROLR

The AER has set out a framework for the ROLR to recover reasonable costs incurred following a ROLR event, and in the case of a default ROLR, in preparing for a ROLR event. The cost recovery scheme also includes mechanisms by which a ROLR will recover these costs.

The AER identified three possible cost recovery mechanisms – an upfront fee, a retail tariff variation, and a distribution payment determination. The AER indicated that the distributor payment determination was the most appropriate because upfront fees have the potential to result in significant price shocks to small consumers, and retail tariff variations did not guarantee a large customer base from which to recover costs.

The Businesses acknowledge that the distribution payment determination may be the only appropriate option in cases where the failed retailer is large. The Businesses confirm and accept the AER's advice that:

- Under the NERL distributor payment determinations are deemed to be a regulatory change event and a positive change event for the purposes of a cost pass through application. This means that the Businesses **will not** need to satisfy the materiality threshold and will be able to recover all ROLR costs determined by the AER.
- Any delays in recovering the distributor payment determination will be addressed by the AER allowing for a return at the approved weighted average cost of capital. The Businesses confirm that the AER would make and approve this adjustment as part of the distributor's annual pricing proposal to the AER.

ROLR costs of the distributor

The AER has proposed that ROLR costs incurred by distributors are recovered through existing cost pass through arrangements under Chapter 6 of the National Electricity Rules (NER). The AER acknowledged there is a discrepancy between how the retailers recovered ROLR costs and how distributors recovered their own ROLR costs. Unlike retailers, distributors are subject to a materiality threshold.

The Businesses disagree with the AER that the distributors' ROLR costs below the materiality threshold are not recoverable. The Businesses consider that under the new definition of "positive change event" in Chapter 10 of the NER, distributor ROLR costs resulting from a retailer insolvency event may be recoverable as amounts relating to a retailer insolvency event.

This is because the proposed clause 6.6.1(k) and (m) of the NER does not preclude the recovery of distributor ROLR costs, and expressly allows for amounts "in respect of" a retailer insolvency event. The Businesses highlight that clause 6.6.1(k) of the NER provides *how* the eligible pass through amount with respect to a retailer insolvency event will be calculated, and that the definition of "positive change event" determines *whether* a pass through event has occurred.

Distributor ROLR costs should be treated in the same manner as retailer ROLR costs. That is, all costs are recoverable and no materiality threshold is applied. Distributor are not provided any allowance for managing a ROLR event through the price determination and as such, should not be expected by the AER to incur such costs.

ROLR plan

The AER's ROLR Plan sets out procedures to be followed by participants in a ROLR event and the conduct of ROLR exercises to test ROLR processes across the industry.

The Businesses are supportive of the procedures set out in the ROLR Plan and support the AER's central role in communicating information to the market. The Businesses note the importance of the ROLR notice and emphasise that efficient communication channels will assist in mitigating losses across the industry.

Closing comments

The Businesses would welcome the opportunity to discuss any of the matters raised in this submission.

If you have any questions, please contact Vivienne Pham on (03) 9683 2023 or by email at vpham@powercor.com.au.

Yours sincerely,



Brent Cleave
MANAGER REGULATION