

22 December 2010

General Manager Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Attention: Sarah McDowell

Dear Sarah,

AER ROLR GUIDLEINE CONSULTATION

I refer to the following Issues Papers released by the Australian Energy Regulator (**AER**) in November 2010 regarding:

1. Retailer of Last Resort (**ROLR**) Cost Recovery Scheme;
2. ROLR Plan Development; and
3. ROLR Registrations and Appointments;

These issues papers have been released in preparation for the adoption in jurisdictions of the National Energy Customer Framework (NECF) which includes the National Electricity Retail Law and National Electricity Retail Rules.

ETSA Utilities has only responded to the issues that could potentially affect a DNSP.

ROLR COST RECOVERY SCHEME

In section 4.2, the AER poses the following questions:

- Q1. Are the factors listed above appropriate?*
- Q2. Are there any additional factors that the AER should consider?*

We note the AER's proposed principles for assessing ROLR cost recovery schemes detailed in section 4.2. These principles appear to reflect those developed by the Essential Services Commission of Victoria (**ESCVic**) in *Issues paper – Energy Retailer of Last Resort*, October 2004 (**ESCVic Issues Paper**).

The AER have omitted one of the factors listed in the ESCVic Issues Paper. Under the ESCVic Issues Paper, the ESCVic determined that it would take into consideration an approach which protects the financial flows within the energy industry. We understand that it was incorporated to ensure that other participants do not fail as a

result of a RoLR event (eg retailer failure). This principle has not been adopted under the AER's ROLR Cost Recovery Scheme.

It is unclear why the AER have sought to omit such an important factor, as the inclusion of this factor would serve to assure other stakeholders in the energy industry that they would not be penalised for the failure of a retailer. ETSA Utilities believes that the assurance this principle provides is important and urges the AER to incorporate it. If the principle is not adopted, a clear explanation should be provided.

We note the AER's proposal to impose a regime whereby distributors make payments to the ROLR for the costs of the ROLR scheme. Distributors would then recover these payments from all retailers through network charges under the pass through provisions of clause 6.6 of the National Electricity Rules (**the Rules**). We understand, that the pass through provisions within the NECF will enable relevant and possible conflicting provisions within a DNSP's determination to be superseded by a nominated pass through provision. The occurrence of a retailer failure event would not have a materiality threshold under the Rules: see definition of 'positive change event' in *National Electricity (Retail Support) Amendment Rules 2010*.

We submit that such an arrangement would not be efficient or cost-effective. We agree with the Issues paper that such an approach is likely to take the longest time for cost recovery and create complexities which may be difficult to address, such as where multiple distribution businesses exist within jurisdictions.

We suggest that a more equitable approach which would not unfairly penalise customers of the failed retailer would be to recover ROLR costs through the Australian Energy Market Operator (**AEMO**). AEMO would increase the fees payable by all retailers to recover the amount of the ROLR costs. This approach would remove the complexities and administrative costs from recovering ROLR costs from all distributors, and the AER would only be required to make one determination for the assessment and recover of costs.

Alternatively, a fund could be established via a levy of all retailers, to fund future ROLR costs. Once the fund reaches a predetermined amount the levy could cease with any earnings re-invested into the fund or used to reduce AEMO fees for the benefit of all customers. That is all customers would effectively establish an insurance fund for the failure of a retailer.

ROLR PLAN DEVELOPMENT

In Section 5, the AER posed the following questions:

- Q 7. Should arrangements be made for the regular transfer of customer data from retailers to a data custodian? If so, who should act as the data custodian?*
- Q 8. What is the appropriate mechanism to provide for the regular transfer of customer data?*

Retailers are obligated under MSTATS Procedures (ie NMI standing data and the CDN process) to provide customer data to the customer's distributor when the customer moves into an address and whenever there are updates to the data. Also, there is a requirement for a reconciliation of the data every 6 months. However, ETSA Utilities as a DNSP does not hold certain customer data and its systems are not configured to hold that data (eg concessions, payment plans).

We consider that the AER should enforce the obligations on participants to ensure that the data held by DNSP's is accurate and can be used as a back-up for the base customer data in the event that the default RoLR is unable to obtain the data from the failed retailer. Consequently, we consider that DNSPs are the most practical custodian of the data as there are already obligations in place for the maintenance of that data. However, it needs to be recognised that some participants do not fully comply with these obligations. Consequently, a more positive enforcement regime is required.

In SA, ETSA Utilities uses the customer data, for other purposes such as making GSL payment direct to customers.

Alternatively, AMEO could be required to hold customer data in the Market Systems.

ROLR REGISTRATIONS AND APPOINTMENTS

In Section 4.2.1, the AER posed the following question.

Q 7. Stakeholders' comments are sought on:

*how often the AER should call for Eols for default RoLR registration;
incidents that should trigger a review of default RoLR arrangements, such as significant mergers or acquisitions.*

To minimise the costs of the RoLR regime the AER should only call for Eol's for the default RoLR every 3-5years or when a change in RoLR company ownership occurs.

In Section 4.2.2, the AER posed the following question.

Q 8. Stakeholders' views are sought on whether they prefer default electricity RoLRs to be registered on the basis of TNI, local retailer area or jurisdiction (or another approach)?

ETSA Utilities considers that default RoLRs should be registered based on a local retailer area. If default RoLRs were appointed based on TNIs it would increase the costs and the complexities after a RoLR event occurred for the DNSP and MDP, as the DNSP/MDP would have to deal with multiple RoLRs.

In Section 4.2.3, the AER posed the following question.

Q 9. Should current jurisdictional RoLRs be registered as default RoLRs in first start jurisdictions in the short-term? Please set out your reasons why / why not.

ETSA Utilities considers that this should not be the case where the current ROLR is a DNSP. ETSA Utilities (a DNSP) does not possess the required retail systems, processes, procedures or knowledge to undertake the ROLR role. Consequently, ETSA Utilities has a contractual relationship with a large retailer in SA to fulfil this function on our behalf.

In Section 4.3.1, the AER posed the following question.

Q 12. Stakeholders' views are sought on whether they prefer additional electricity RoLRs to be registered on the basis of TNI, local retailer area or jurisdiction (or another approach)?

See response to question 8 above, there should only be one default RoLR appointed for each local retailer area to keep the ROLR process simple and less costly.

In Section 4.6, the AER posed the following question.

Q 22. Do stakeholders agree with the proposed three year review period for default RoLRs? Please set out your reasons why / why not.

ETSA Utilities considers that the review period should be no shorter than three years unless circumstances warrant (eg change in credit rating of the default ROLR)

If you have any queries, questions or require more detail in regard to our submission please contact Mr Grant Cox on 8404 5012.

Yours sincerely



Eric Lindner
General Manager Regulation & Risk

GTC/no ESCOSA Letter.dot