



ENA response to AER Retailer authorisation guideline

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Energy Networks Association

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Contents

Abbreviations	
1. Executive summary.....	3
2. Background	3
3. High level comments on the Retailer Authorisation Guideline.....	3
3.1 Part 1: AER process	3
Registration with the Australian Energy Market Operator	3
Dual fuel, gas or electricity	4
3.2 Part 2: Entry criteria	4
Organisational and technical capacity criterion.....	4
Financial Resources criterion	5
Suitability criterion.....	5
4. Responses to questions in the issues paper.....	5
Section 3—Process for assessing retailer authorisations	5
Section 4—Entry criteria and information requirements.....	5
Section 5—Issues subsequent to a grant of a retailer authorisation	7

Abbreviations

AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
ENA	Energy Networks Association
NEO	National Electricity Objective
NERL	National Energy Retail Law
NERR	National Energy Retail Rules
NECF	National Energy Customer Framework
NERO	National Energy Retail Objective
NGO	National Gas Objective
RoLR	Retailer of Last Resort

1. Executive summary

The Australian Energy Regulator (AER) Retailer Authorisation Guideline is of special interest to Energy Networks Association (ENA) members because the integrity of the electricity and gas markets are dependent upon the ability of participants to:

- perform their designated tasks, and
- do so without the risk of financial collapse.

The retail sector is:

- a key part of customer service delivery, and
- exposed to the volatile wholesale market

and, as such, prudent assessment of retailers must be undertaken to enhance the likelihood of the smooth running of market operations.

The detailed responses to the questions below are intended to support the AER's objective of a 'rigorous process' in the assessment of Retailer Authorisations.

2. Background

ENA is the peak national body for Australia's energy networks which provide the vital link between gas and electricity producers and consumers. ENA represents gas distribution and electricity network businesses on economic, technical and safety regulation and national energy policy issues.

Energy network businesses deliver electricity and gas to over 13.5 million customers, employ more than 40 000 people and contribute approximately 1.25 percent to Australia's gross domestic product. Energy is delivered across Australia through approximately 48 000 km of transmission lines, 800 000 kilometres of electricity distribution lines and 81 000 kilometres of gas distribution pipelines. Energy network businesses are valued at over \$60 billion and annually undertake an average investment of approximately \$6 billion in network operations, reinforcement, expansions and greenfields extensions.

3. High level comments on the Retailer Authorisation Guideline

3.1 Part 1: AER process

Registration with the Australian Energy Market Operator

The guideline states that retailers are prohibited from selling energy to customers unless they are registered with the Australian Energy Market Operator (AEMO). However the guideline should recognise that there are other conditions precedent which need to be met by the retailer before contracting with a customer on a network.

The current network use of system agreements or access terms and conditions have provided an important basis for establishing the necessary arrangements a distributor requires with a specific retailer before it can provide services to customers. The proposed National Energy Customer Framework (NECF) does not require a contractual arrangement between retailers and distributors, and hence this contractual basis for starting criteria no longer exists. The mechanism for the retailer engaging with a distributor to provide name, address, ABN, various contact information for financial and operational interfacing and escalation, credit ratings and credit support, business to business contact connectivity, IT contingency support, etcetera, in order to establish an account with that retailer needs to be managed in some manner.

A retailer should also have certification at a transactional level in the respective market and have agreed a testing regime (if required) with each of the distributors. Where a retailer has inadequate capability, this

creates problems for distributors and may create poor delivery of services to customers. It is unclear how (or whether) the AER will be assessing that these processes have been undertaken.

For the effective operation of the energy market there needs to be certainty that retailers are capable of carrying out necessary transactions according to the relevant jurisdictional requirements for each fuel type. It is also necessary for retailers to interact efficiently with distributors and carry out transactions through their gateways and systems. This is particularly important as retailers can access more complex customer services in smart metering.

ENA strongly suggests that the guideline make a number of other steps clear that a retailer must undertake before engaging with customers, including ensuring they are ready to transact with distributors before contracting with customers, approved safety cases are in place, etcetera.

Dual fuel, gas or electricity

The guideline states that a retailer may seek authorisation for the sale of:

- electricity, or
- gas, or
- electricity and gas as a joint application, or
- electricity and gas as separate applications.

The AER rationale is that much of the information required under each application is the same.

The Victorian gas market has different rules, transactional level capability and other nuances from other gas markets and from the electricity market. The AER's operational capability assessment must pertain to each of the specific markets and fuels sought in the application.

In addition the financial capacity to cover 12 months expenditure must include the ability to meet all prudential's/hedging/supply arrangements for each fuel and jurisdiction. The same financial capacity assessment must not be reused multiple times, thus increasing the risk of retailer failure at the expense of customers.

3.2 Part 2: Entry criteria

Organisational and technical capacity criterion

The AER Retailer Authorisation Guideline states that the AER will assess retailer authorisations on the following criteria:

- organisational and technical capacity
- financial resources
- suitability.

The AER considers that it is restricted to assessing the ability of an applicant to comply with energy legislation administered by it. The AER then states that on this basis it does not intend to consider readiness or ability to comply with jurisdictional obligations except where they affect the applicant's ability to operate under the NERL, NERR or Regulations.

ENA notes that this appears to exclude a number of essential retailer obligations and capabilities including:

- Transactional capability in the respective gas market or the electricity market.
- Establishment and maintenance of gas safety cases. The AER should give some consideration to the retailers' essential role in the establishment of safe customer installations under the current gas industry arrangements.
- Potentially safety, technical and customer related matters with the more complex services delivery under smart metering as the smart metering arrangements may span parts of the NERR, the NER B2B Procedures and other jurisdictional regulatory instruments.

- Potentially, depending on the structure and content of the co-regulatory national and jurisdictional environment created by the NECF, jurisdictional aspects of the NECF.

To exclude these matters from the consideration of the potential retailer's organisational and technical capacity could result in retailers without required capabilities in these areas with potential impacts on distributors and customers.

ENA strongly recommends that the AER consider all aspects of technical and operational capability for the specific fuel and jurisdiction in which the retailer is seeking authorisation.

Financial Resources criterion

The ENA is especially interested in the AER's assessment of a retailer's satisfaction of financial resources entry criteria. The AER should impose a precondition that a retailer is only authorised to sell energy to customers if credit support obligations under Chapter 6B of the National Electricity Rules have been met. This precondition should be imposed across the board to all retailers and not just retailers with a certain credit rating.

The guideline should require that a retailer applying for an authorisation has provided adequate credit support as per the credit support rules prior to a retailer authorisation being granted. This will provide the best assurance that the retailer has the ability to pay the distribution use off system charges.

The ENA believes that the provision of credit support in favour of the distributor is just as important as the AEMO prudential requirements as both contribute to the secure and reliable operation of the National Electricity Market.

Suitability criterion

The AER will assess a retailer authorisation application on whether it is likely to contribute to the National Energy Retail Objective (NERO) and act in the long-term interests of consumers.

NERO is focused on consumer protection. ENA suggests that the AER also consider the NEO and NGO so that the long-term interests of customers are also viewed from the perspective of the market, supply reliability and security etcetera.

4. Responses to questions in the issues paper

Section 3—Process for assessing retailer authorisations

- 3.1 Would prospective applicants benefit from briefings prior to the submission of an application? If so, please provide details of the form (for example, group or individual sessions) and content of briefings that would be most beneficial for prospective applicants.**

ENA has no comment on this question.

Section 4—Entry criteria and information requirements

- 4.1 Is it appropriate for the AER to require only a compliance strategy rather than a compliance plan or systems at the time of the application? Please provide any reasons for your view.**

As detailed in the ENA high level comments on the proposed authorisation regime above in Section 3 of this response, there are a number of process and operational requirements which it is essential for retailers to have in place to be able to successfully operate in the market without costs to other participants and customer impacts.

It is essential for the AER to get sufficient input and details from potential retailers to assess with a degree of surety that the retailer will have these capabilities in place. This implies a degree of detail above that of a 'compliance strategy'.

4.2 What guidance, if any, should the guideline provide on the types of risks that the AER would expect to be covered by a risk management strategy?

The AER may wish to consider the triggers or business management failures that led to the three retailers exits to date in the market (2 RoLR and one partial trade sale). This may enable the AER to determine whether more detail:

- in compliance strategy or risk management strategies, and/or
- on the three basic entry criteria regarding capability

could have avoided these failures and costs which are ultimately born by customers.

4.3 Is 12 months an adequate period for the assessment of whether a retailer has the financial capacity to operate without reliance on customer takings? Please provide any reasons for your view.

The guideline states that applicants must demonstrate sufficient financial capacity to operate for a period of 12 months without reliance on customer takings.

The guideline should make it clear that this is for each fuel/jurisdiction in which the retailer wishes to operate and that it needs to include the ability to meet the financial peaks and prudential calls caused by stressed market conditions of high energy prices. In other words, the same financial backing cannot be used as financial coverage multiple times over and needs to ensure coverage of unusual financial demands.

4.4 The AER acknowledges the limitations of financial statements and declarations in establishing an applicant's financial health. What alternative methods of assessment may be appropriate?

ENA has no comment on this question.

4.5 Does the limitation on information that need to be provided on compliance breaches—being those that have occurred in the past 10 years and that have led to enforcement action or an enforceable undertaking—strike an appropriate balance between ensuring a rigorous assessment and the information burden on applicants? Please provide any reasons for your view.

ENA has no comment on this question.

4.6 What issues or concerns may arise from a requirement for applicants to provide certified criminal history checks?

As the industry moves to a carbon-constrained economy, higher electricity and gas prices and a more complex service offering and delivery to customers with smart meters, more conditions and situations will arise where there is potential for market manipulation which may be used to overcome the current market and customer protective mechanisms. We are supportive therefore of the allowance to undertake police checks as the AER assess that this is required.

4.7 What other information requirements not provided for in the draft guideline would be appropriate for the AER to impose? Please provide details of these requirements and the rationale for inclusion.

As detailed in the ENA high-level comments on the proposed authorisation regime above in Section 3 of this response, there are a number of process and operational requirements which it is

essential for retailers to have in place to be able to successfully operate in the market without costs to other participants and customer impacts.

It is essential for the AER to get sufficient information from retailers to assess that not only do they understand the various interface matters to which they require to commit, but also to have within the information requirements the necessary detail to ensure they have the management commitment, the personnel capabilities, and the basis of a program of activities and works to achieve these outcomes.

4.8 Which, if any, of the information requirements contained in the draft guideline seem unnecessary or unduly burdensome? Please provide details and the reasoning behind your comments.

ENA has no comment on this question.

Section 5—Issues subsequent to a grant of a retailer authorisation

5.1 Is it appropriate to target retailers who wish to begin or resume retailing after a period of dormancy for compliance audits or monitoring? Please provide any reasons for your view.

ENA has no comment on this question.

5.2 What matters should the AER have regard to, other than the rights of customers, when imposing conditions on the transfer, surrender or revocation of a retailer authorisation?

Operation of the framework

As outlined in the ENA high-level comments on the proposed authorisation regime above in Section 3 of this response, the AER guideline suggests that a retailer authorisation could cover multiple fuels and jurisdictions. There is no clarity in the guideline regarding what happens if a retailer with a dual fuel and/or jurisdiction authorisation chooses to exit one fuel only or may be deregistered from a particular jurisdictional gas market. The relationship of a material non compliance in one fuel and jurisdiction or the deregistration from an individual gas market and how it affects the retailers authorisation for other jurisdictions and fuels needs to be clarified.

This clarification must ensure that where a distributor in one particular jurisdiction and fuel is not getting paid from a retailer, there is a clear avenue for the AER to take prompt action to limit the cost burden to customers. This path must not be obstructed and extended by lengthy deliberation with respect to national authorisation arrangements and issues, and consideration of a possible apprehended RoLR event.

Conditions must ensure distributors recover all valid charges

The AER guideline states that the AER may revoke an authorisation where a retailer has materially failed to meet the obligations of being a retailer under the NERL/NERR or other applicable energy legislation. Where the AER revokes an authorisation, they may consult with AEMO and impose conditions on the transfer of the retailer's customers to another retailer.

The ENA strongly recommends that where the AER and AEMO are facilitating a trade sale, that they also consult with the impacted distributors. Any trade sale should also ensure that all unpaid debt with the distributor is paid for by the old or the new retailer. The AER should impose conditions to ensure that distributors are able to recover all valid costs for services provided.

5.3 What issues may arise, if any, in requiring the holder of the retailer authorisation to demonstrate that customers will remain on the same or better terms following a transfer or surrender of the retailer authorisation?

ENA has no comment on this question.

5.4 Is it appropriate for the AER to require applicants to develop procedures for customers to take action against them following the revocation or surrender of the retailer authorisation? If not, what other protections for customers are / could be provided?

ENA has no comment on this question.