

NATIONAL ENERGY RETAIL LAW

DIVISION 5 OF PART 6

AMENDED RoLR NOTICE

The Australian Energy Regulator (AER) has amended this Notice under section 136 of the National Energy Retail Law (NERL).

RoLR Event

A Retailer of Last Resort (RoLR) event occurred in relation to Flow Systems Pty Ltd (Flow Systems) (ABN 28 136 272 298). Flow Systems supplies energy to customers in embedded networks. Flow Systems is an authorised electricity retailer for the purposes of Part 5 of the NERL with the authorisation identification E17004.

On 20 December 2018, Christopher Clarke Hill and Philip Patrick Carter were appointed as voluntary administrators to Flow Systems. The appointment of an insolvency official is a RoLR event under section 122 of the NERL.

The AER originally issued this RoLR notice on 15 February 2019 and amended it on 7 May 2019.

Affected Markets

Flow Systems only supplies energy to customers in embedded networks. Flow Systems does not buy electricity through the wholesale market, but from market registered retailers, which it then on sells to customers in embedded networks. As at 8 February 2019, Flow Systems had approximately 2,000 customers, in five embedded network sites in Queensland and New South Wales.

The AER did not appoint a RoLR or direct AEMO to transfer the customers of Flow Systems.

Retailer authorisation

The AER may revoke a retailer's authorisation at the same time it issues a RoLR notice through an 'endorsement' in the RoLR notice. The AER decided to **not** revoke Flow Systems' authorisation.

Amendment to the RoLR notice

Flow Systems was sold to Brookfield FS Holdings Pty Ltd on 15 April 2019. Flow Systems is no longer under external administration and is trading as usual.

DATED: 3 May 2019


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Paula Conboy
Chair

Additional information on the Flow Systems Pty Ltd RoLR event

The RoLR scheme is principally designed to ensure that when an energy retailer fails, their customers continue to be supplied energy. Customers of retailers registered in the wholesale market are automatically transferred to designated RoLRs to allow them to continue to receive an energy supply. One of its other objectives is to reduce generators' exposure to the failed retailer's non-payment.

The AER oversees the national RoLR scheme under the NERL. The AER must develop and publish RoLR guidelines, develop and publish a RoLR plan, appoint default RoLRs, and appoint designated RoLRs following a RoLR event.

On 20 December 2018, Flow Systems entered voluntary administration. The appointment of an insolvency official is a RoLR event under section 122 of the NERL. Christopher Clarke Hill and Philip Patrick Carter were appointed as voluntary administrators and informed the AER that they had secured funding to continue operating Flow Systems as normal, without interruption to customers, and that they had started an expedited sales process.

Flow Systems is an embedded network infrastructure and service provider: it is not registered in the National Electricity Market (NEM). As an authorised retailer, Flow Systems is subject to the Retail Law's RoLR provisions. However, because it is not registered in the NEM and its customers are off-market,¹ the AER cannot appoint a RoLR or direct AEMO to transfer its customers.

Background on Flow Systems Pty Ltd

The AER granted Flow Systems an authorisation on 28 September 2017, having determined that it met the entry criteria specified in the Retail Law:

- a) the organisational and technical capacity criterion – the applicant must have the necessary organisational and technical capacity to meet the obligations of a retailer;
- b) the financial resource criterion – the applicant must have resources or access to resources so that it will have the financial viability and financial capacity to meet the obligations of a retailer;
- c) the suitability criterion – the applicant must be a suitable person to hold a retailer authorisation.

What happens after a RoLR event occurs?

Once a RoLR event occurs, the AER may decide to issue a RoLR notice—a RoLR notice represents the AER's formal decision that a RoLR event has occurred. The occurrence of a RoLR event is sufficient grounds for issuing a RoLR notice but the AER has discretion to not issue a notice. The AER must make this decision as soon as practicable following a RoLR event.

¹ Off-market customers do not have direct connections to the National Electricity Market (NEM).

Typically, when a RoLR event occurs, the AER would issue a RoLR notice to appoint one or more RoLRs and to direct AEMO to transfer the failed retailer's customers to the RoLR(s). The AER may also (but does not need to) revoke the retailer's authorisation through the notice.

Embedded network retailers are subject to the Retail Law's RoLR provisions. However, the procedures for managing an embedded network RoLR event, in particular the transfer of customers, do not apply. This is because embedded network retailers are not registered in the wholesale market and AEMO cannot transfer their customers to a designated RoLR or RoLRs. Embedded network retailers must therefore have alternative contingency arrangements in place.

The AER's decision

After gathering and assessing the required information, the AER decided to issue a RoLR notice in relation to Flow Systems' failure. The notice was issued on 15 February 2019. In this notice, the AER decided not to revoke Flow Systems' authorisation.

Since the RoLR event, the AER was in regular contact with Flow Systems' administrators. Flow Systems' administrators advised that they secured the requisite funding to continue to operate Flow Systems until an accelerated sale of the business was completed.

The AER was satisfied that Flow Systems could continue to operate as an authorised retailer up until the sales process was concluded, and then after the sale was complete. As such, the AER did not revoke Flow Systems' authorisation.

In reaching its decision, the AER considered a range of factors, in particular:

- how to best meet the interests of Flow Systems' customers and ensure they have continued electricity supply arrangements
- the interests of broader stakeholders and energy market
- the options available to transfer customers should Flow Systems cease to be a going concern (given there is no mechanism to transfer its customers under the RoLR scheme).

The AER considered the interests of Flow Systems' customers would be best served if the administrator could achieve a sale of the company. This would mean that Flow Systems' customers continued to receive their electricity supply and would not be required to make their own supply arrangements.

The AER continued to monitor the situation closely with Flow Systems' administrators until the sales process was complete. This occurred on 15 April 2019. Flow Systems' is no longer under external administration and is trading as usual. The AER has amended this RoLR notice to reflect this change in Flow Systems' circumstances.

