



## Issues Paper

# RoLR Registrations and Appointments

November 2010

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## Shortened forms

ACCC	Australian Competition and Consumer Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
DTS	Declared Transmission System
EoI	Expression of interest
ESCV	Essential Services Commission of Victoria
MCL	Maximum Credit Limit
NECF	National Energy Customer Framework
NEM	National Electricity Market
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules
RIN	Regulatory Information Notice
RoLR	Retailer of Last Resort
TNI	Transmission Node Identifier

## Definitions

Additional RoLR	means a retailer who is registered as a RoLR for a connection point (for electricity) or distribution system (for gas); but is not the default RoLR. The AER may, in agreement with the retailer, place conditions on the registration of an additional RoLR.
Connection Point	is defined in chapter 10 the National Electricity Rules (NER). Each connection point represents a point of supply (e.g. to first tier and second tier customers).
Default RoLR	means a retailer who is registered by the AER as a RoLR for a connection point (for electricity) or distribution system (for gas). The default RoLR is taken to be the RoLR for the event, unless the AER notifies AEMO of an alternative appointment prior to the RoLR event.
Designated RoLR	means a registered RoLR who is appointed by the AER as the designated RoLR for the RoLR event.
Distribution System	has the same meaning as it has in section 2 of the National Energy Retail Law, i.e. for a distributor who is a service provider within the meaning of the National Gas Law (NGL) who owns, operates or controls a distribution pipeline that is a covered pipeline under that law—a distribution pipeline within the meaning of the NGL; or for a nominated distributor under section 12 of the NGL—the nominated distribution system that is specified in a notice under that section.
Local Area	is the geographical area allocated to a network service provider by the authority responsible for administering the jurisdictional electricity legislation in that jurisdiction.
Local Retailer Area	is defined in chapter 10 of the National Electricity Rules and relates to the local area of the retailer responsible for supplying first tier customers in that area.
Registered RoLR	means a retailer registered as a RoLR by the AER.
RoLR event costs	refers to costs recoverable by a registered RoLR pursuant to a RoLR cost recovery scheme established under Division 9 of Part 6 of the Retail Law.

# 1. Introduction

## 1.1 Background

The AER is an independent statutory authority that is part of the Australian Competition and Consumer Commission (ACCC). It monitors the wholesale electricity and gas markets and is responsible for compliance with and enforcement of the National Electricity Law and Rules and the National Gas Law and Rules. It also regulates electricity networks in the National Electricity Market (NEM) and gas pipelines in jurisdictions other than Western Australia.

The AER will also assume responsibility for the enforcement of the National Energy Retail Law (Retail Law) and National Energy Retail Rules (Retail Rules) under the National Energy Customer Framework (NECF). This includes responsibility for the regulation of electricity and gas retail markets (other than retail pricing) in participating states and territories.

## 1.2 Last resort arrangements

If an energy retailer experiences financial difficulties it is clearly in its interests—as well as its customers and the market generally—for the business to remain as a going concern and, if necessary, to sell its customer contracts to another retailer (“trade sale”). However, if a retailer fails and it cannot achieve a trade sale its customers may have to be compulsorily transferred to another retailer.

To date only two retailers have failed in the Australian energy market, EnergyOne in 2007 and Jackgreen in 2009. Despite the rarity of retailer failure in the Australian market, last resort arrangements need to be in place to manage any further failures.

The NECF makes provision for a national Retailer of Last Resort (RoLR) scheme to provide common arrangements across jurisdictions in case of retailer failure. The purpose of the RoLR scheme is to ensure customers continue to receive electricity and/or gas and to maintain the stability of the wholesale electricity and/or gas markets.

Retailer failure under the Retail Law can be triggered in a number of ways, including suspension from wholesale energy markets by the Australian Energy Market Operator (AEMO).

The AER has responsibility under the Retail Law for administering the national RoLR scheme. The AER is responsible, amongst other things, for registering and appointing RoLRs. Thus, the AER must ensure that a “default” RoLR is registered to each connection point in the case of electricity, and each distribution system in the case of gas, at all times. The AER may also register one or more “additional” RoLR for each electricity connection point or gas distribution system. Following a retailer failure, responsibility for supplying the retailer’s customers will automatically be transferred to the designated RoLR(s). A designated RoLR will be either a default RoLR or an additional RoLR.

The RoLR appointment process established under the NECF departs from current jurisdictional arrangements in that it allows for retailers to tender for appointment. This

arrangement has been used with considerable success in the United Kingdom and Ireland but is untested in Australia.

The AER notes that the speed at which RoLR events unfold may preclude the selection and appointment of RoLRs by tender at the time of an event. This may exclude second-tier retailers from consideration as RoLRs. The AER therefore proposes to allow retailers to commit to agreed terms and conditions of appointment in advance and for a fixed period of time. For example, a small retailer might volunteer to take on up to 5,000 small customers in New South Wales at any time during the next quarter subject to average wholesale prices being below a certain level. In addition the retailer might agree to not make any cost-recovery claims and to forego the need to be consulted before appointment. This will enable RoLR appointments to be made quickly while promoting competition among retailers for RoLR appointment.

### **1.3 RoLR scheme implementation**

Energy Ministers have agreed to allow jurisdictions to transition to the new energy retail framework over time to enable them to meet their particular market circumstances and regulatory needs. Jurisdictions will also be able to apply parts of the NECF at different times. At the time of writing, no firm implementation decisions had been made. Although the new RoLR arrangements will apply nationally, the AER will implement them progressively as and when jurisdictions apply the RoLR scheme. The AER will focus initially on those jurisdictions with the most immediate needs.

## 2. Public Consultation Process

### 2.1 How to make submissions to this issues paper

The AER invites comments on this issues paper. Submissions can be sent electronically to [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au) or by mail to:

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

The closing date for submissions is 22 December 2010.

The AER prefers that all submissions be publicly available to facilitate an informed and transparent process. Submissions will therefore be treated as public documents unless otherwise requested, and will be placed on the AER's website ([www.aer.gov.au](http://www.aer.gov.au)). Parties wishing to submit confidential information are requested to:

- clearly identify the information that is subject of the confidentiality claim
- provide a non-confidential version of the submission, in addition to the confidential one.

The AER does not generally accept blanket claims for confidentiality over the entirety of the information provided and such claims should not be made unless all information is truly regarded as confidential. The identified information should genuinely be of a confidential nature and not otherwise publicly available.

In addition to this, parties must identify the specific documents or relevant parts of those documents which contain confidential information. The AER does not accept documents or parts of documents which are redacted or 'blacked out'.

For further information regarding the AER's use and disclosure of information provided to us, please refer to the *ACCC–AER information policy: the Collection, Use and Disclosure of Information*, which is available on our website.

### 2.2 Next steps

To assist in the development of the various processes and regulatory instruments required under the Retail Law, the AER has prepared a series of RoLR issues papers. Feedback on these issues papers will inform the AER as it prepares for its new functions, including the drafting of RoLR guidelines.<sup>1</sup> In particular, the AER seeks feedback on the issues identified

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<sup>1</sup> Section 135 of the Retail Law



in this paper and welcomes advice on any other issues that might be relevant to the development of the RoLR registration and appointments framework.

This paper is one of three issues papers on RoLR being released for consultation. The other two papers relate to the development of a RoLR plan and RoLR cost recovery.

The AER envisages completing the RoLR framework in four stages.

#### *Stage 1*

- The AER will release issues papers for consultation on the following topics:
- registration and appointment of RoLRs
- development of RoLR plans
- RoLR cost recovery.

Submissions will be due on 22 December 2010.

The AER is planning a stakeholder forum on 1 December 2010 with VCU links to all states to discuss issues arising from these papers.

#### *Stage 2*

- The AER will release for consultation draft RoLR guidelines.
- The AER will likely make a preliminary decision on default RoLR registrations for commencement of the national RoLR scheme. This decision is subject to any transitional arrangements in relation to default RoLRs and is also subject to any Expressions of Interest (EoIs) from retailers during Stage 1 for registration as default RoLRs.

#### *Stage 3*

- The AER will finalise the RoLR guidelines
- The AER will register default RoLRs and publish their details on its website.
- The AER will call for EoIs from retailers wishing to register as additional RoLRs.

The AER aims to complete these tasks early in the second quarter of 2011 to allow it to assess EoIs and approve any RoLR cost recovery scheme proposals in time for the commencement of the national RoLR scheme, potentially, in July 2011.

#### *Stage 4*

- The AER will consider EoIs submitted to it during Stage 3.
- The AER will consider applications for RoLR cost recovery.

### **2.3 Registration for stakeholder forum**

As mentioned above, the AER is holding a half-day stakeholder forum on 1 December 2010 to discuss the issues raised in this paper, the RoLR plan and RoLR cost recovery papers. The Melbourne-based forum will have video conference links to Canberra, Brisbane, Adelaide, Sydney and Hobart.

To register your attendance at the forum please send an email to [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au) by 29 November 2010. The subject of the email should state '*Registration for the AER's National RoLR Scheme Forum - attention Dominique Chivers.*'

### **3. Development of the AER's approach to RoLR registrations and appointments**

This chapter outlines the AER's proposed approach to developing the RoLR registrations and appointments framework. It proposes a number of objectives that will guide the scheme's development and suggests what the registration and appointments framework might look like. The chapter also considers a number of constraints on RoLR registrations and appointments.

#### **3.1 Objectives of RoLR regime**

Taking the national energy retail objective of the Retail Law as its starting point<sup>2</sup>, the AER considers the primary objectives for the national RoLR scheme should be to ensure:

- that customers maintain continuity of supply in the event of retailer failure
- that customers' interests are protected with respect to price (i.e. through competition in the RoLR appointment process) and other terms and conditions
- the integrity of wholesale market arrangements (i.e. payments between retailers and generators / upstream suppliers)
- the continuity of payments to suppliers of transmission/distribution services and other ancillary energy service providers,
- that RoLRs have an opportunity to recover reasonable costs

With these objectives in mind, the AER considers that the RoLR registration and appointments framework should:

- result in the appointment of retailers with the financial and organisational capacity to carry out the functions of a RoLR
- minimise the risks of a RoLR itself failing
- set out clearly how RoLR appointments will be made (including multiple appointments)
- not discourage trade sale opportunities
- not be unduly costly to administer
- be able to be implemented quickly and simply

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<sup>2</sup> The objective of [the Retail Law] is to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy. Section 113 of the Retail Law.

- minimise disruption to customers and the market, as a whole.

### Issues for consideration

Q 1. Stakeholders' comments are sought on the objectives that should guide the development of the RoLR registration and appointments processes. Are the objectives identified in the paper appropriate? Are there others that should be included?

## 3.2 RoLR registrations and appointments: constraints

Certain features of the Australian electricity and gas markets have implications for the design of the RoLR registration and appointments framework. An example is the gas markets allocation processes that support the settlements calculations in most jurisdictions. Gas is reticulated in such a way that the injection points into distribution networks from which the gas is sourced cannot be directly linked with individual consumption off-takes. This inability requires that the load allocations in the wholesale markets be made at a discrete distribution network level. This effectively limits RoLR appointment to discrete distribution networks and precludes the appointment of more than one gas RoLR per distribution network. Although there is greater flexibility appointing multiple RoLRs in the electricity market, it too will be influenced by markets settlements processes, with the more workable appointment options being those based on meter data aggregation. RoLR registration and appointment options are discussed more fully in chapters 4 and 5, respectively.

The Retail Law enables the AER to appoint RoLRs in addition to, or instead of, default RoLRs. However, the amount of scope the AER has to appoint these “additional” RoLRs will largely depend on the amount of warning the AER has of a RoLR event. Put simply, the less warning the AER has, the less scope it has to make a RoLR appointment. If, at the time of a RoLR event, there is insufficient time for the AER to make a RoLR appointment the default RoLR(s) will automatically be appointed<sup>3</sup>. If a RoLR event is triggered by market default (which it most likely will be) there will be little time between the default and suspension in the electricity market. The AER understands that a decision to suspend a retailer from the electricity market would generally be made in the afternoon following a market default, with the suspension becoming effective at midnight. AEMO has advised that the AER would likely have just over 24 hours in which to make a decision about a RoLR appointment.<sup>4</sup> The

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<sup>3</sup> Section 132 of the Retail Law provides that the default RoLR is taken to be appointed as the RoLR in respect of a retailer failure unless the AER has previously notified AEMO of an alternative appointment.

<sup>4</sup> AEMO suggests that it would need to know the designated RoLR before deciding to suspend the retailer to give it enough time to establish customer transfer systems, estimate load data for the nominated RoLR(s) and to calculate RoLRs' new prudential amounts.

turn-around in the Victorian gas market is even less. The AER understands that at best it might have 2 hours to make a decision.<sup>5</sup> Timing constraints are discussed further in chapter 5.

The national RoLR framework allows retailers who might otherwise not be considered suitable for registration and appointment as default RoLRs to volunteer for registration as additional RoLRs. However, whilst additional RoLRs can compete with default RoLRs for appointment, the ability of default RoLRs to compete for appointment in a RoLR event is less clear-cut. Specifically, the Retail Law sets out that:

- a default RoLR may only register as an additional RoLR against a connection point for electricity or for a distribution system for which it is *not* the default RoLR<sup>6</sup>, and
- retailers who agree with the AER to vary cost recovery schemes may not afterwards seek to recover any more than agreed: however, this provision does not apply to default RoLRs.<sup>7</sup>

The ability of default RoLRs to compete with additional RoLRs therefore appears limited in that they cannot register as an additional RoLR for the connection points / distribution systems for which they are the registered default RoLR. The AER may also be unwilling to accept a default RoLR's offer to vary its RoLR cost recovery scheme if the retailer's agreement is not binding.

This issue is important in the context of the appointment of RoLRs discussed in chapter 5.

#### **Issues for consideration**

- Q 2. Stakeholders' views are sought on the extent to which the ability of default RoLRs to compete against additional RoLRs might be limited under the Retail Law.
- Q 3. Stakeholders are asked to identify any other constraints on RoLR registrations and appointments.

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<sup>5</sup> A default in the Victorian gas market leads to immediate suspension of the retailer. This is not the case in the ACT and NSW gas markets. RoLR gas arrangements still need to be developed in Queensland and South Australia.

<sup>6</sup> Sections 126(5) and (6) of the Retail Law

<sup>7</sup> Section 167(5) of the Retail Law

## 4. RoLR registration

By allowing retailers other than the default RoLR to register as a RoLR the NECF introduces an element of competition into the national RoLR scheme that is not present in current jurisdictional schemes. Thus the Retail Law provides for two categories of RoLR registration:

- Default RoLRs—there must be one (and only one) default RoLR for each connection point (electricity) and distribution system (gas) at all times; and
- Additional RoLRs—one or more retailers may be registered as additional RoLRs for connection points and distribution systems. If registered, additional RoLRs may be appointed instead of, or in addition to, the default RoLR(s) should a RoLR event occur.

The AER proposes to register additional RoLRs under two categories, which for convenience, are referred to as “additional RoLRs with firm offers” and “additional RoLRs with non-firm offers”. To elaborate:

- Additional RoLRs with firm offers—retailers commit to take on a certain category or number of customers at a specified cost or no cost. Offers would be open for a fixed period. By making a firm offer retailers agree to not being consulted at the time of a RoLR appointment; and/or
- Additional RoLRs with non-firm offers—retailers nominate the number of customers and possibly class of customer they are prepared to accept. The nomination is indicative only. At the time of a RoLR event the AER will confirm the retailer’s ability to be appointed and any terms and conditions proposed by the retailer.

This chapter proposes a framework for:

- applying the RoLR registration criteria
- the registration of default RoLRs
- the registration of additional RoLRs
- reviewing RoLR registrations.

### 4.1 RoLR criteria

The AER must consider the RoLR criteria when registering and appointing RoLRs. There are three broad criteria for registering RoLRs set out under section 123 of the Retail Law: organisational and technical capacity, financial resources and suitability.

This section considers how the AER might assess retailers’ fitness to be registered as a RoLR.

### 4.1.1 RoLR registration criteria

#### a. Organisational and technical capacity

The Retail Law defines this criterion as the extent to which the retailer has the necessary organisational and technical capacity to meet the obligations of a RoLR; in particular, whether the retailer has adequate systems in place for that purpose or is able to implement adequate systems in a timely manner for that purpose.

To satisfy this criterion, the retailer would need to demonstrate to the AER that it has, or could have, the systems (IT and billing) and processes needed to acquire and communicate with customers at short notice. The retailer will also need to be able to liaise with key RoLR stakeholders leading up to, and during a RoLR event, including the AER, AEMO, Government, failed retailer and ombudsman.

#### b. Financial resources

The financial resources criterion relates to whether the retailer has adequate resources, or access to adequate resources, to ensure its financial viability and financial capacity to meet its obligations if appointed as a RoLR.

The AER considers that this criterion could be satisfied by a retailer in a number of ways, including:

- demonstrating the ongoing profitability of the business
- showing that the retailer has capacity in its hedging contracts to purchase energy for the number of customers it has indicated it can take,<sup>8</sup> or otherwise indicating how it could absorb the customers into its business.

The AER would also consider a retailer's prudential situation at the time of registration by assessing:

- how close the retailer is to existing credit limits, and
- the retailer's ability to extend existing credit facilities should it acquire more customers as part of its RoLR responsibilities.

The AER notes that a retailer's prudential situation at the time of registration will likely be different to its prudential situation at the time of a RoLR event.

#### c. suitability

To determine whether a retailer is a suitable person to be a RoLR the Retail Law requires the AER to consider three criteria including: the number of customers the retailer has; the class

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<sup>8</sup> The Retail Law notes that one matter to consider under the financial resources criterion is whether a retailer has adequate hedging contracts for it to be a RoLR.

or classes of customer the retailer has; and the area or areas that the retailer currently serves. A further criterion, availability of supply, applies only to gas where there is no declared wholesale gas market or short term trading market.<sup>9</sup>

The first aspect of the suitability criterion, the number of customers a retailer has, will assist the AER to identify whether the retailer is likely to have the organisational capability and financial resources to undertake RoLR responsibilities. For example, a large retailer should be in a better financial position and have greater systems capacity and ability to take on large numbers of customers at short notice than a smaller new entrant retailer. Furthermore, a large retailer might be expected to have a greater range of energy supply options to source energy for its customers. For small retailer failures (e.g. less than 25,000 customers), a retailer with a medium-sized customer base (e.g. 150,000 customers or less) should have the organisational and financial capacity to absorb some or all of the customers. Hence, there is likely to be a positive correlation between the size of the retailer and the numbers of customers it is able to take on.

The second aspect of the suitability criterion relates to the class(es) of customers the retailer has. For example, does the retailer sell energy to only small customers or only large customers? If the retailer only sells energy to small customers, it is unlikely to have an appropriate business model to take on large RoLR customers. This may include having insufficient financial capacity and effective communication strategies for large customers.

The third aspect of the suitability criterion relates to the geographical area that the retailer serves. The fact that a retailer does not sell energy in a particular area should not preclude it from being considered for RoLR registration in that area. However, a retailer that sells energy in a particular area is bound to have certain advantages over one that does not.<sup>10</sup>

The final aspect of the suitability criterion is specific to gas (that is, where there is no declared wholesale gas market or short term trading market) and is intended to establish whether, and to what extent, the retailer has sufficient:

- gas available from a distribution system, and

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<sup>9</sup> Section 123(1)(c)(iv) of the Retail Law

<sup>10</sup> The significance of geography was highlighted in a recent review of gas retailers of last resort by the Essential Services Commission of Victoria (ESCV). Specifically the ESCV considered whether to define gas RoLR regions according to local retail areas or network areas. Retailers argued that RoLR regions should be aligned with the local retail areas because of retailers' familiarity with these areas. Whilst not dismissing the retailers' argument, the ESCV considered that aligning RoLR boundaries with distribution boundaries was more important as it would help facilitate customer transfers. ESCV, *Geographic boundaries for gas retailers of last resort. Final decision*. September 2008.



- capacity available to it on that distribution system and any relevant transmission pipeline.

For a gas retailer to satisfy this criterion, the retailer should be able to demonstrate that it has, or could have, the appropriate contractual arrangements to supply any transferred customers. However, under the Retail Law the AER can direct distributors to make gas available to the designated RoLR, if required<sup>11</sup>.

d. Any other matters the AER considers relevant

The AER may consider any other relevant matters, either specified in the energy laws or deemed relevant in the circumstances, when registering retailers as RoLRs.<sup>12</sup>

#### **Issues for consideration**

- Q 4. Stakeholders' comments are sought on the matters the AER should consider in relation to the RoLR criteria, namely:
- organisational and technical capacity
  - the financial resources test
  - suitability.
- Q 5. Noting the AER's requirement to consider the RoLR criteria when registering RoLRs, comments are sought on the relative importance of each of these criteria and, in the case of suitability, the sub-criteria within that criterion.
- Q 6. Stakeholders' comments are sought on any other matters the AER should include in the RoLR criteria.

## **4.2 Registration of default RoLRs**

Under the Retail Law the AER must:

- register a default RoLR for each connection point for electricity
- register a default RoLR for each distribution system for gas
- ensure there is one (and no more than one) default RoLR for each electricity connection point and each gas distribution system at all times.<sup>13</sup>

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<sup>11</sup> Section 137 of the Retail Law

<sup>12</sup> Section 123 of the Retail Law

<sup>13</sup> Sections 125(1) and (2) of the Retail Law

These provisions are intended to ensure that a retailer is always available to assume RoLR responsibilities if a retailer fails.<sup>14</sup>

#### **4.2.1 Expressions of interest**

On the commencement of the NECF the AER must call for expressions of interest (EoIs) from retailers to register as RoLRs (RoLR registration EoI). Following this initial call, the AER may seek EoIs at such times it considers appropriate.<sup>15</sup> The AER intends to seek EoIs for RoLR registration (default and additional) as and when state and territory jurisdictions adopt the national RoLR scheme.

The AER may register a retailer as a default RoLR even if it has not submitted an EoI. However, if it has not, the AER must notify the retailer before it does so.<sup>16</sup> The AER may register a retailer as a default RoLR without the retailer's agreement.<sup>17</sup>

The AER anticipates that default RoLRs will need to be able to take on a large number of customers at short notice and would therefore need capable business support and IT systems. It also notes that the default RoLR is entitled to recover any reasonable costs associated with putting these systems in place.<sup>18</sup> The AER is concerned that a regular turnover of default RoLRs would increase the overall cost of the RoLR scheme. Therefore, the AER's preliminary view is that the default RoLR registrations should be fixed for a number of years.

The AER notes that there will be circumstances when default RoLR arrangements might need to be reviewed, for example if the default RoLR itself fails or if there is a merger or acquisition in the market.

#### **Issues for consideration**

Q 7. Stakeholders' comments are sought on:

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

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<sup>14</sup> If the AER does not notify AEMO of the appointment of an alternative RoLR before a RoLR event occurs, the default RoLR will automatically be appointed. Section 132(1) of the Retail Law

<sup>15</sup> Section 124(1) of the Retail Law

<sup>16</sup> Section 125(3) of the Retail Law

<sup>17</sup> Section 125(5) of the Retail Law

<sup>18</sup> Section 166(3) of the Retail Law

## 4.2.2 Areas of registration

The Retail Law mandates that there must be only one default gas RoLR registered to each distribution system. However, there are more registration options with electricity. Default RoLRs are to be registered by connection points and can therefore be grouped in a number of ways. The AER's preliminary view is that there are three options for registration of electricity default RoLRs: registration by Transmission Meter Identifier (TNI), local retailer area or jurisdiction.

Most jurisdictions have a number of local retailer areas (South Australia, Tasmania and the ACT are the exceptions), and most local retailer areas have several TNIs.<sup>19</sup> The current practice in states and territories is for RoLRs to be registered against connection points grouped by local retailer areas. Another approach might be to use TNIs as the basis of default RoLR registration. This would allow a greater number of default RoLRs to be registered.

The AER feels that the decision of how to group connection points will need to be made on a jurisdiction by jurisdiction basis. For example, if the intention is to maximise the number of registered default RoLRs or if there is only one local retailer area in a particular jurisdiction, grouping by TNI may be preferable to grouping by local retailer area.

### Issues for consideration

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)?<sup>20</sup>

## 4.2.3 Proposed default RoLR registrations for first start jurisdictions

The AER notes that jurisdictions have not yet decided when they will apply the NECF and what, if any, arrangements will be grandfathered for its commencement. To ensure that default RoLR arrangements are in place in any jurisdictions that apply the NECF early the AER proposes to continue with existing RoLR appointments in those jurisdictions. That is to say, current jurisdictional RoLRs will be registered as default RoLRs for first start jurisdictions, at least in the short term, and in the absence of grandfathering.

### Issues for consideration

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.

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<sup>19</sup> There are approximately 560 TNIs recorded in AEMO's MSATS system including generator TNIs (that are not relevant to a RoLR scheme).

<sup>20</sup> Stakeholders proposing another option in their submission should consider whether their proposal could be supported by AEMO's current systems and if not, whether the benefit of providing this option outweighs the potential costs associated with system changes.

Q 10. Stakeholders' views are sought on the length of the initial term of registration of default RoLRs in first start jurisdictions.

Q 11. The AER is interested in hearing from any party wishing to express interest in being a default RoLR for the commencement of the NECF.

### 4.3 Registration of additional RoLRs

Under the Retail Law, the AER may register one or more retailers as additional RoLRs for each electricity connection point, and for each gas distribution system.<sup>21</sup> All authorised energy retailers from participating jurisdictions will be able to seek registration as an additional RoLR. However, a retailer can only be registered as an additional RoLR for connection points (electricity) or distribution systems (gas) for which it is not the default RoLR.<sup>22</sup>

The AER may only register a retailer as an additional RoLR:

- if the retailer has lodged a RoLR register expression of interest (EoI)
- and after taking into account the RoLR criteria.

The AER is not obliged to register retailers as additional RoLRs even though they satisfy the RoLR criteria.<sup>23</sup>

#### 4.3.1 Areas of registration

Because it is not possible to predict where a retailer might fail the AER would encourage retailers wishing to register as additional RoLRs to apply over a wide geographical area to maximise their chances of appointment. There is no reason for a retailer to restrict itself to only receiving customers in a certain TNI or local retailer area. Thus, for electricity, retailers might consider applying to register as additional RoLRs across all connection points in a jurisdiction or a number of jurisdictions.

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)?<sup>24</sup>

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<sup>21</sup> Section 126(1) of the Retail Law

<sup>22</sup> Sections 126 (5) and (6) of the Retail Law

<sup>23</sup> Section 126(9) of the Retail Law

<sup>24</sup> Stakeholders proposing another option in their submission should consider whether their proposal could currently be provided for by AEMO's systems and if not, whether the benefit of providing this option outweighs the potential costs associated with system changes.

### 4.3.2 Categories of registration

Typically, when a RoLR event occurs there will be limited time for the AER to select an alternative, non-default RoLR (additional RoLR). The AER is therefore considering measures that would assist with the RoLR selection process, for example by retailers pre-committing to the terms and conditions under which they would be prepared to be appointed as a RoLR. That way the AER will have the information it needs to quickly make appointment decisions and the prior agreement of retailers to make the appointments.

The AER therefore proposes two categories of additional RoLR registration—a firm offer category and a non-firm offer category—with retailers able to register for either or both.

#### *Additional RoLR with firm offer*

An additional RoLR with a firm offer essentially commits to being a RoLR but with certain restrictions or conditions. For example, a retailer might commit to being a RoLR:

- for only a certain type of customer (i.e. small or large)
- for a maximum number of customers or customer load per jurisdiction
- only if the average prices in a market (i.e. the NEM or gas market) have been below a certain level over a defined period (i.e. the previous three months), and
- agree to not seek to recover RoLR costs if it is appointed RoLR.

A retailer's offer would be valid for a fixed period of time, say three months. At the end of this period offers would be reviewed to confirm the retailer's continued suitability, and interest in continuing, as an additional RoLR either under the current terms and conditions or different ones. One of the conditions of being registered as an additional RoLR with a firm offer is that the retailer agrees to be appointed as a RoLR without further consultation.

#### *Additional RoLR with non-firm offer*

An additional RoLR with a non-firm offer has not committed to accepting RoLR customers, but has indicated its interest in being a RoLR if an event occurs. It may also propose terms and conditions but, unlike an additional RoLR with firm offer, they are not binding. Any conditions of registration will inform, but not determine, the AER's appointment decision as the retailer will need to be notified prior to appointment. Although a registered RoLR's consent is not required for appointment<sup>25</sup> the AER considers that it is prudent to confirm that an additional RoLR with non-firm offer is still prepared and capable of being appointed on the terms and conditions it previously proposed.

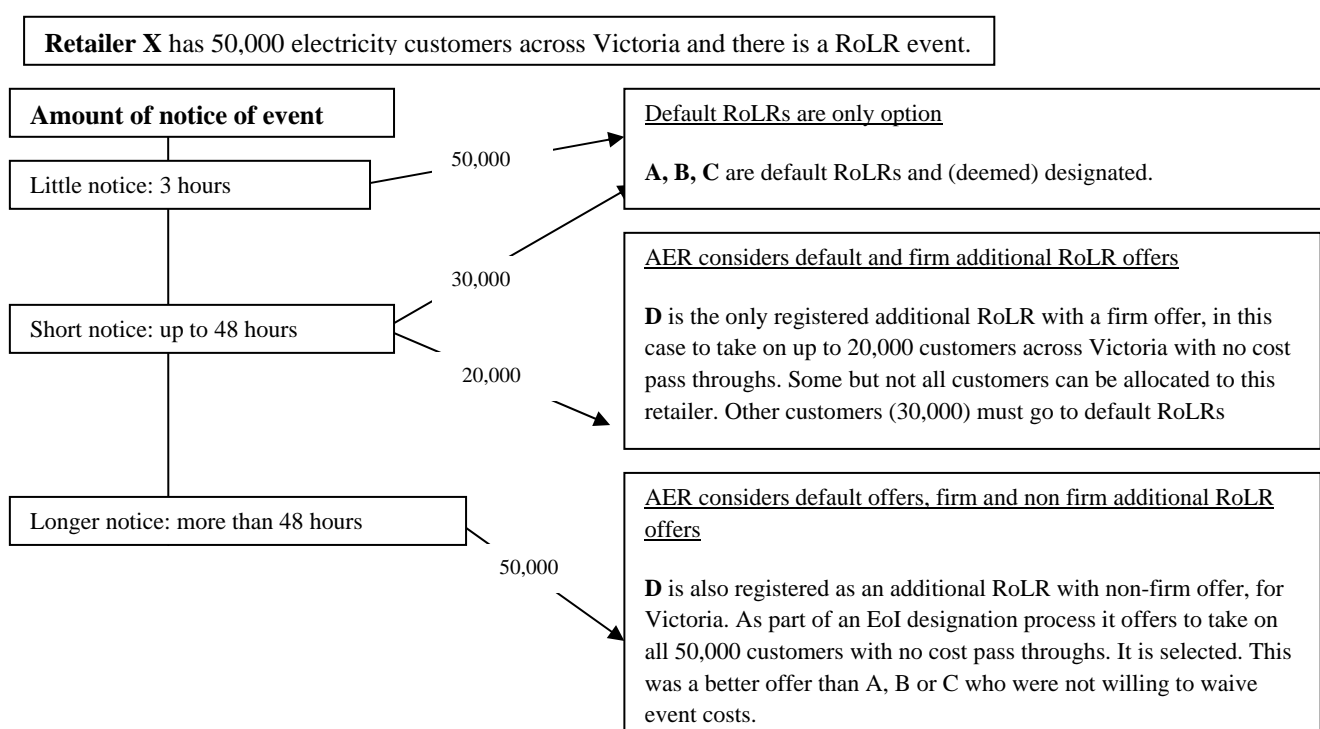
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<sup>25</sup> Section 132(4) of the Retail Law

### Example of selection process

A major factor in the AER's selection of RoLRs for appointment will be to the amount of time the AER has to make the decision. Figure 4.2 below considers which registered RoLRs will be able to be considered for appointment according to the notice the AER receives of an impending RoLR event. The diagram illustrates that the more warning the AER has, the more options it has to appoint additional RoLRs (i.e. non-default RoLRs). For example, where there is little notice the only feasible option is likely to be appointment of default RoLRs. Even with short notice (i.e. up to 48 hours) the AER may be able to consider additional RoLRs with firm offers as well as default RoLRs.<sup>26</sup> (Timing implications for RoLR appointments are discussed further in chapter 5.)

**Figure 4.2 RoLR scenarios – which registered RoLRs may be considered?**



### 4.3.3 Expressions of interest (EoIs)

The AER expects that retailers that make a firm commitment will want to review this commitment periodically. The AER therefore intends to call for EoIs from retailers that want to register as additional RoLRs with a firm offer every three months. Any current offers will also need to be re-affirmed or re-made at the end of that period. The AER intends to seek

<sup>26</sup> The AER notes that there would have been enough time with Australia's two RoLR events for additional RoLRs with non-firm offers to have been considered. Energy One requested its suspension from the market and Jack Green suspension was triggered after a publicly announced creditors' action to wind up.

EoIs for additional RoLRs with non-firm offers less frequently, say every two years, as these offers are indicative rather than binding.

To reduce the administrative burden for retailers the AER supports a simple process where firm offers are re-affirmed or varied, for example, by way of a standard form application or exchange of letters.

Although EoIs may be lodged with the AER at any time<sup>27</sup>, realistically, it is unlikely that the AER will be able to consider an EoI for RoLR registration immediately before a RoLR event.

#### **Issues for consideration**

Q 13. Do stakeholders support the two categories proposed for additional RoLR registration? Please set out your reasons why / why not.

Q 14. Should there be any other categories for additional RoLR registration?

Q 15. How long should a firm offer apply?

Q 16. How should firm offers be re-submitted to the AER?

## **4.4 RoLR terms and conditions**

Retailers may propose terms and conditions under which they are prepared to be appointed when they apply for RoLR registration.<sup>28</sup> Whilst all retailers applying for RoLR registration may make such proposals, the AER expects that potential default RoLRs would be less likely to take up this option than potential additional RoLRs. Smaller retailers in particular will find it useful to make their RoLR appointment conditional on certain factors to help reduce the risk that the RoLR could be exposed to.

The AER may also impose conditions on the registration of an additional RoLR (but not a default RoLR) with the retailer's consent.<sup>29</sup>

The Retail Law allows retailers to propose the following terms and conditions:

- Customers or classes of customers—A retailer may wish to specify whether they are prepared to accept small or large customers, or a combination of both, if appointed RoLR. There are many retailers who market to only one particular class of customer. A retailer who has only small customers is unlikely to have the financial and systems capacities to take on large customers following a RoLR event.

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<sup>27</sup> Section 124(2) of the Retail Law

<sup>28</sup> Section 124 (4) of the Retail Law

<sup>29</sup> Sections 126(7) and (8) of the Retail Law

- Numbers of customers—Retailers will be able to nominate the maximum number of customers or customer load that they are prepared to accept. In addition to minimising a retailer’s risk, a cap on customer numbers or load may assist the retailer to prepare for the transfer of RoLR customers if it knows it will receive no more than it can manage. To help retailers prepare offers and assist the AER to make a quick decision, the AER proposed establishing customer number bands in the RoLR guidelines (e.g. 2,000, 4,000 and 6,000 customers, etc).
- Variations to the retailer’s RoLR cost recovery scheme—The retailer may propose if and how it might vary its cost recovery scheme if appointed as RoLR<sup>30</sup>. It may also propose to waive RoLR event costs altogether.

In addition the AER proposes the following possible terms and conditions for additional RoLRs:

- Prudential limits—As an alternative to registering for a maximum number of customers or load, retailers may prefer to register their interest by reference to their prudential position at the time of a RoLR event. For example, an electricity retailer may wish to register to take on a number of customers or load up to an amount that, following the transfer, will not cause it to exceed existing credit limits. The AER has concerns that this approach may not be workable given the tight timeframes, but is interested in the views of stakeholders.
- Market price—Retailers may also specify current wholesale energy market conditions under which they would be prepared to be appointed a RoLR (e.g. the average electricity spot price for a prior period). This may reduce the retailer’s financial risk associated with being a RoLR. The potential for cascading failure in periods of high energy prices may also be lessened. As the AER will need to make decisions quickly it will seek to keep calculations simple. The AER therefore proposes to limit the application of this condition. For example, the condition might be based on a weighted average price for the 30 days leading up to and including the Friday before the RoLR appointment.

#### **Issues for consideration**

- Q 17. Are there any conditions that default RoLRs might propose to attach to their registrations?
- Q 18. Do stakeholders agree with the extra conditions proposed for the registration of additional RoLRs? Please set out your reasons why / why not.

<sup>30</sup> Default RoLRs who agree with the AER to vary cost recovery schemes may, despite this agreement, seek to recover more costs after the RoLR event. This is not the case with additional RoLRs (section 167(5) of the Retail Law).



Q 19. Stakeholders' views are sought on the extent to which the proposed conditions for additional RoLR registration should be limited in order to simplify comparison at the time of an event.

Q 20. Are there any other conditions that additional RoLRs would seek to attach to their registration?

#### 4.5 AER RoLR Register

The Retail Law requires the AER to maintain and publish on its website a register of RoLRs.<sup>31</sup> The register of RoLRs must include particulars of the RoLRs registered, and must indicate whether the retailer is registered as a default RoLR (including for which connection points or distribution system) or as an additional RoLR.

The RoLR register must include any conditions that apply to additional RoLRs' registrations. The register may also include other particulars or information the AER considers necessary or desirable.

The AER notes that the full disclosure of registration conditions could have negative consequences for retailers and is therefore interested in retailers' views on this issue.

#### Issues for consideration

Q 21. Please identify any problems with the full disclosure of registration conditions and indicate whether it would influence your decision to seek additional RoLR registration?

#### 4.6 Review of RoLR Registration

The AER may terminate a retailer's RoLR registration—at any time, for default RoLRs,<sup>32</sup> and after giving due notice, for additional RoLRs.<sup>33</sup> Additional RoLRs may also terminate their RoLR registration at any time.<sup>34</sup>

Given the need for registered RoLRs to be able to act at short notice, the AER intends to periodically review registrations against the RoLR criteria. If a registered RoLR is no longer considered to meet these criteria, the AER will take steps to terminate registration.

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<sup>31</sup> Section 127 of the Retail Law

<sup>32</sup> Section 125(9) of the Retail Law

<sup>33</sup> Section 128 of the Retail Law

<sup>34</sup> Section 128 of the Retail Law

For default RoLRs, the AER is proposing to review registrations every three years. The AER considers that more frequent reviews are not necessary as default RoLRs will be registered on the basis that they have the financial, organisational and technical capacity to act as a RoLR in the short to medium term for both small and large customers. However, the AER may wish to review the registration of a default RoLR if there were any material changes to the retailer's ability to act as a RoLR.

The AER will effectively review the registration of additional RoLRs with firm offers every three months—that is, each time the retailer's offer is up for renewal.

The AER intends to review the registration of additional RoLRs with non-firm offers every two years. In the AER's view these retailers do not need to be reviewed as frequently as additional RoLRs with firm offers as they will be consulted before they can be appointed as RoLRs anyway.

#### **Issues for consideration**

- Q 22. Do stakeholders agree with the proposed three year review period for default RoLRs? Please set out your reasons why / why not.
- Q 23. What circumstances or events should require the AER to review the registration of a default RoLR?
- Q 24. Do stakeholders agree with the proposed two year review period for additional RoLRs with non-firm offers?

## 5. Appointment of designated RoLRs

### 5.1 The AER's approach and powers for RoLR appointment

In the likelihood, or on the occurrence, of a RoLR event, the AER must appoint a default RoLR or additional RoLR(s) as designated RoLRs. The AER must notify a registered RoLR (default and additional) before appointing it as a RoLR but does not need its consent to do so.<sup>35</sup>

The RoLR framework is designed to enable the AER to receive early warning of the possibility of a RoLR event occurring (contingency event).<sup>36</sup> Thus the Retail Law requires AEMO and retailers to notify the AER of any circumstances that might give rise to a RoLR event.<sup>37</sup> If the AER suspects that a retailer may be in difficulty, the Retail Law also allows the AER to obtain further financial information from the retailer, such as information on cash flows, monies owed to distributors and details of the retailer's current financial position.<sup>38</sup>

When appointing a RoLR the AER is required to consider the criteria specified under section 133 of the Retail Law (RoLR designation criteria). The AER also proposes to obtain market data from AEMO to help inform its RoLR appointment decisions. The AER and AEMO are currently exploring the AER's information requirements in terms of data type and when information should be provided (e.g. periodically or at the time of an event).

This chapter discusses more fully factors that will influence RoLR appointments, in particular:

- the RoLR criteria
- timing considerations and appointment options
- multiple RoLR and back up RoLR requirements
- gas RoLR directions

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<sup>35</sup> Sections 125(5 and 132(4) of the Retail Law

<sup>36</sup> Section 130 of the Retail Law defines contingency events as including circumstances constituting a RoLR event, as well as any material default in relation to financial settlements, including the payment of network charges or payment of credit support to a distributor, and any other default with respect to the retailer's financial obligations under energy laws.

<sup>37</sup> Section 150 of the Retail Law

<sup>38</sup> Section 130(4) of the Retail Law

## 5.2 RoLR designation criteria

The Retail Law sets out the criteria the AER must consider when determining whether to appoint a registered RoLR.<sup>39</sup> These are:

1. the RoLR criteria (discussed in chapter 4)
2. the retailer's cost recovery arrangements
3. the imminence of the RoLR event
4. any other matters the AER considers appropriate, eg competing offers

These criteria are discussed in further detail below.

### a. RoLR criteria

As discussed in chapter 4, the AER intends to regularly review registered RoLRs to ensure that they continue to meet the RoLR criteria. This is important, as when a RoLR event is imminent the AER will have limited time to thoroughly scrutinise retailers' organisational and technical capacities. At the time of a RoLR event, the AER will also consider the likely flow-on effects of a retailer taking on additional customers. AEMO's advice on retailers' prudential limits will be helpful in this respect.

### b. RoLR cost recovery

In determining whether to appoint a registered RoLR the AER must consider whether the retailer has a cost recovery scheme and if so, what costs are recoverable and how much those costs are likely to be. In making its assessment the AER will aim to keep costs low for customers. With all other things being equal, the AER is likely to appoint the RoLR (default or additional) that intends to recover the lesser RoLR costs or no costs.

### c. Imminence of the RoLR event

The AER's flexibility to appoint additional RoLRs instead of, or in conjunction with, a default RoLR will depend on how imminent the RoLR event is. If the AER has not advised AEMO (in writing) of an alternative (non-default) RoLR appointment before the event occurs, the default RoLR is taken to be the designated RoLR.<sup>40</sup> The AER considers that it would need at least three hours notice of a RoLR event for both electricity and gas for it to be able to consider the appointment of anyone other than a default RoLR.

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<sup>39</sup> Section 133 of the Retail Law

<sup>40</sup> Sections 132 (1) and (2) of the Retail Law

d. Any other matters

The Retail Law allows the AER to take into account any other matters it considers relevant before appointing an additional RoLR for a RoLR event. The types of matters the AER will consider will be guided by the scheme objectives that were outlined in Chapter 3. For example, the AER will need to consider the impact of the appointment of an additional RoLR on wholesale market integrity, in particular, the potential for cascading failures during periods of high wholesale energy prices. The AER will seek to avoid appointing a RoLR if that retailer has insufficient financial capacity to continue to pay for energy for its customers and any newly acquired RoLR customers.

Where time permits the AER will also consider the following factors in its RoLR appointment decision:

- the simplest and most efficient means of managing the RoLR event, and
- the impact of an appointment on retail competition.

In terms of event management, the simplest solution would arguably be to appoint as few RoLRs as possible. However, other matters such as costs to customers, post-event market shares and retail competition will also have a bearing on the AER's decision. The AER considers that it is not in customers' long term interests if a RoLR appointment were to lead to one retailer dominating the market. For instance, if two registered RoLRs are willing to take on the same customers in the same area without recovering RoLR costs, the AER will likely appoint the retailer with the smaller customer base provided it has the capacity to take on the customers. In these circumstances, the AER considers that retail competition will be better served by allowing the smaller retailer to increase its market share.

**Issues for consideration**

Q 25. Stakeholders' comments are sought on the relative importance that the AER should place on the:

- RoLR criteria
- RoLR cost recovery
- the imminence of the RoLR event

in determining RoLR appointments.

Q 26. Stakeholders' comments are sought on what other matters the AER should consider when determining RoLR appointments and their importance relative to other criteria including:

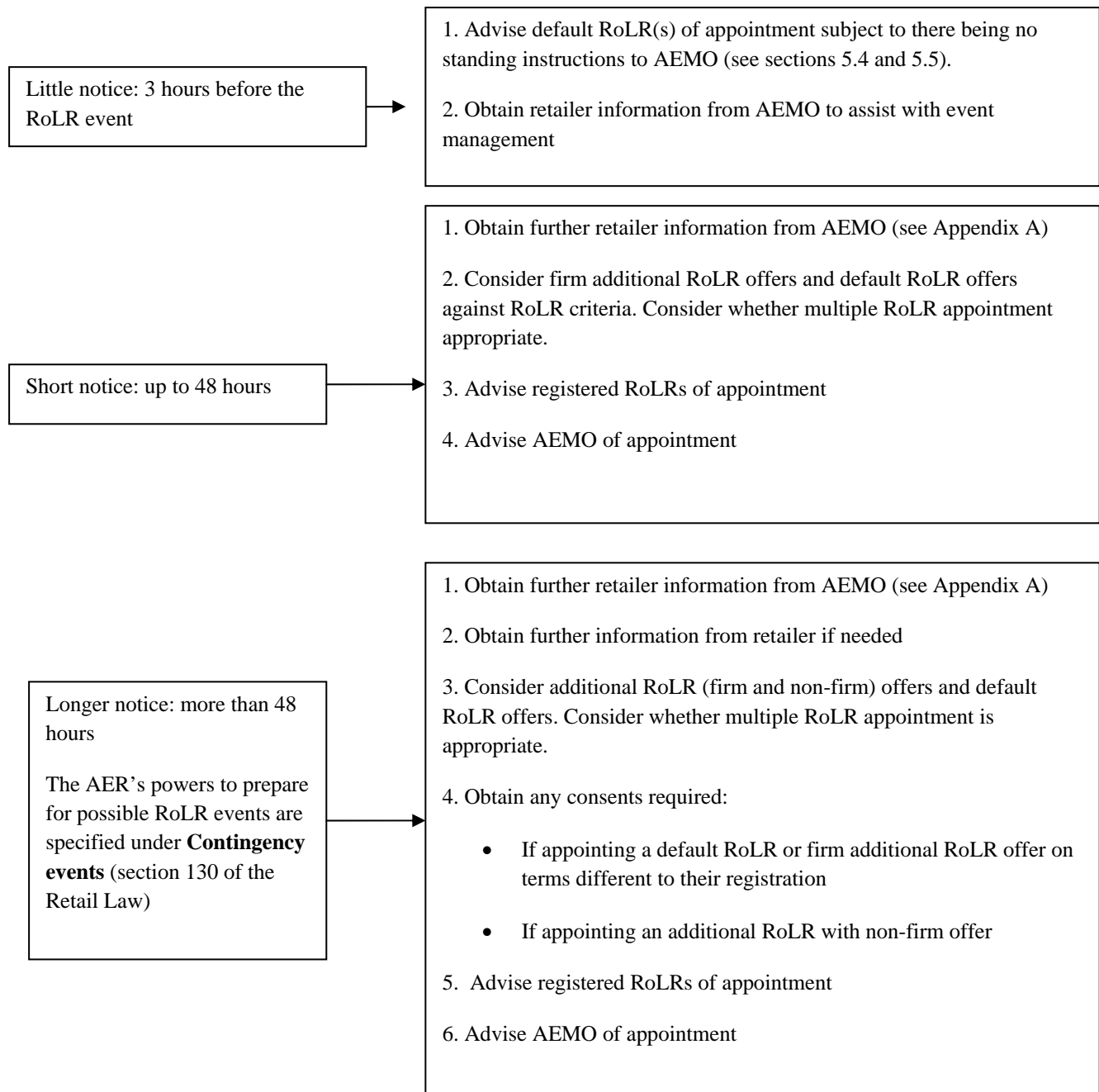
- event management
- promotion of competition.

### 5.3 Timing considerations and appointment options

This section considers RoLR appointments in terms of how much notice the AER has of a RoLR event as well as the information requirements for each of the appointment options.

Figure 5.1 highlights the different processes that the AER will undertake depending on how much notice it has of a RoLR event.

**Figure 5.1: RoLR appointment process**



*(a) Little notice*

With little or no notice of a RoLR event there is likely to be insufficient time to properly consider additional RoLR offers and the default RoLR(s) would automatically be appointed.<sup>41</sup> Where the default RoLR itself fails or another large retailer fails, alternative RoLR appointments will be necessary. This is discussed further in sections 5.4 and 5.5.

Even if the AER does not have time to make an appointment decision it still needs certain information to help it manage the RoLR event. At a minimum the AER would need information about the number of customers affected and their geographic location to:

- identify the default RoLRs for the jurisdictions in which the failing retailer has customers
- issue a RoLR notice as required under section 136 of the Retail Law
- determine how many/which customers the default RoLR(s) would receive
- communicate essential information to stakeholders in accordance with the RoLR plan.

*(b) Short notice*

With more notice the AER may have the opportunity to allocate customers to one or more additional RoLR with firm offers, but probably not additional RoLRs with non-firm offers. As explained in Chapter 4, additional RoLRs with firm offers would have committed to certain conditions (e.g. taking on certain categories of customers or numbers of customers, and recovering partial or no RoLR costs, etc.) if appointed as RoLR. The AER might appoint additional RoLRs in preference to the default RoLR if it would result in all or some of the following:

- lower costs for customers, for example, if a retailer commits to take RoLR customers at a lower cost than a default RoLR, or indeed waives RoLR costs altogether.
- the appointment of fewer RoLRs, which would reduce communications requirements between RoLR event participants (for example, communications with distributors, the AER and AEMO) and generally simplify the event management process
- increasing competition in the retail market
- reducing the likelihood of cascading retailer failures.

In selecting a RoLR the AER would have regard to all the RoLR designation criteria discussed in section 5.2 (including the RoLR criteria). The AER would pay particular attention to the retailer's customer base and its financial capacity to purchase energy for the additional customers.

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<sup>41</sup> Section 132 of the Retail Law.

If there is enough notice for the AER to consider appointing additional RoLRs, the AER would potentially require accurate information from AEMO on:

- the number of customers affected and/or the load
- the geographic location of the customers or load affected
- AEMO's current prudential limits for registered RoLRs and their ability to absorb the new customer load.

The AER notes that a retailer's current prudential limits are not necessarily a true gauge of its ability to take on extra customers following a RoLR event. This is because even if a retailer's current prudentials are insufficient to absorb a certain number of customers or load, the retailer may be able to quickly increase its credit by obtaining further bank guarantees. If a RoLR appointment results in a retailer needing further credit the AER would need to be satisfied that the retailer could secure the extra credit before appointing it as a RoLR.

The AER may also need to consider wholesale market prices at this time if an offer were conditional on market prices. This information would allow the AER to:

- quickly assess the financial viability of registered RoLRs and their ability to purchase energy for the RoLR customers
- consider options for allocating customers, and
- provide accurate information to the registered RoLR(s) to help prepare for the RoLR event.

*(c) Longer notice*

The more notice the AER has of an impending RoLR event, the more options it has to make RoLR appointments.

Circumstances in which the AER might have longer notice of a RoLR event may include when:

- the AER revokes a retailer's authority
- a court application is made to wind up a retailer
- a retailer announces its intention to discontinue supplying energy.

If the AER considers that a RoLR event is likely, it is empowered to inquire of one or more registered RoLRs whether they want to be a designated RoLR should the retailer fail<sup>42</sup>. With sufficient notice and a firm belief that a retailer will fail the AER may call for expressions of

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<sup>42</sup> Section 130(5) of the Retail Law



interest from registered RoLRs to be appointed as a RoLR. It would seek offers from all registered RoLRs including default RoLRs and additional RoLRs.

Registered RoLRs would be encouraged to submit their best offers having considered the information available at the time of the event (Refer to Appendix A for a list of the information that can be provided by AEMO). Additional RoLRs with firm offers could vary their offers in this instance.

When calling for EoIs, the AER suggests that retailers should be given 24 hours to respond to a request for offers. The timeframe for the AER to appoint a RoLR will depend on the number of responses the AER receives. However, it anticipates that it would make a decision within 24 hours.

The AER notes that its contingency event powers are discretionary. The AER is mindful of the need to exercise these powers sensitively so as not to further jeopardise a retailer's financial situation and its prospects of a trade sale.

#### **Issues for consideration**

Q 27. Stakeholders' views are sought on the weight the AER should give to:

- (a) lower RoLR event costs
- (b) event management
- (c) long term competition
- (d) any other matters

when considering RoLR appointments.

Q 28. If a RoLR appointment were to result in a retailer needing further credit, what information should satisfy the AER that the retailer is able to secure further credit? What is an appropriate length of time for the retailer to secure any additional credit (bearing in mind the AER's need to make a decision promptly)?

Q 29. Is the information proposed to be sourced from AEMO adequate for retailers to submit an EoI for RoLR appointment? Please set out your reasons why / why not.

Q 30. To help the AER make appointment decisions, what sort of information should the AER seek:

- (a) from retailers lodging an EoI
- (a) from failing retailers under contingency events?

Q 31. Is the time proposed for retailers to respond to a request for EoIs adequate? Please set out your reasons why / why not.

## 5.4 Appointment of Multiple RoLRs

Section 134 of the Retail Law provides that the AER may appoint more than one registered RoLR for a RoLR event if it considers it appropriate to do so. If it does so, the AER is required to allocate customers to each designated RoLR, to the extent possible, in accordance with the RoLR guidelines. To make multiple RoLR appointments the AER would require the same minimum information identified for single RoLR appointments, namely information about the number of customers affected, their geographic locations and customer information by distribution zone, local retailer area and potentially TNI.

The Retail Law requires RoLR guidelines to specify the circumstances in which the appointment of more than one RoLR may occur<sup>43</sup>. Appointment of multiple RoLRs might occur, for example, if there is a number of registered additional RoLRs willing and capable of being appointed as RoLRs and there is time to consider the offers, or when a large retailer fails. In the case of a large retailer failure the AER would obtain AEMO's advice on the likely effect of a bulk customer transfer on any proposed RoLRs' prudential limits before appointing them. Also, in this situation, and given the tight time frames in which the AER will have to act, an option might be for the AER to give AEMO a standing instruction on fall-back appointments. This instruction would be specific to certain retailer failures, and would specify the RoLRs to be appointed.

The RoLR guidelines must also specify how particular customers or classes of customers are to be allocated between RoLRs<sup>44</sup>.

There is no scope for appointing multiple gas RoLRs as gas RoLRs can only be registered by distribution system. As noted earlier, however, there is more scope with electricity where connection points can be grouped in a number of ways, for example by TNI, local retailer area and possibly also postcode.

Grouping customers by postcode has the advantage over the other options of allowing customers to be more easily identified and therefore simplifying customer communications. However, AEMO has advised that "postcode" is a poorly maintained field in AEMO systems with low quality data. Postcode allocation would also hamper AEMO's ability to accurately and quickly assess a RoLR's load requirements and prudential limits, resulting in delays to the prudential assessment process and significantly increasing risk to the RoLRs, generators and the market.

Given their smaller size, TNIs provide more scope for multiple RoLR appointments than local retailer areas and jurisdictions. In jurisdictions with only one local retailer area, grouping customers by TNI may be the better option in that it allows for multiple RoLR appointments. As TNIs contain fewer connection points than local retailer areas, TNIs might also be a viable option if only a small number of customers need to be transferred.

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<sup>43</sup> Section 135(2)(a) of the Retail Law

<sup>44</sup> Section 135(2)(b) of the Retail Law

A drawback with using TNIs, however, is that a significant number of postcodes are split across TNIs. Therefore, if multiple RoLRs were appointed customers within the same postcode would end up with different RoLRs,<sup>45</sup> which would make communication with customers more difficult during a RoLR event. This is not the case for local retailer areas, as most postcodes lie entirely within a local retailer area. Refer to Attachment B which contains representative sample data from Victoria showing customer distribution by postcode and by TNI.

#### **Issues for consideration**

Q 32. In which situations are multiple RoLR appointments necessary and/ or desirable?

Q 33. In the case of large retailer failures, what sorts of factors might require multiple RoLR appointments?

### **5.5 Back-up RoLR arrangements (failure of default RoLR)**

The Retail Law does not make specific provision for default RoLR failure. The AER notes that the ESCV has established arrangements for local retailer failure, which may be helpful in this instance. Victoria's arrangements for the failure of local retailers are<sup>46</sup>:

- for electricity, the RoLR customers would be shared amongst the remaining default RoLRs / local retailers according to TNIs
- for gas, the RoLR areas are defined by the distribution zones. Each distribution area has two local retailers; therefore, if one of these retailers fails the other local retailer in the failed retailer's distribution zone would be appointed RoLR.

The AER acknowledges that although these arrangements might be appropriate in Victoria, they may not be elsewhere, for example if there is only one local retailer in the jurisdiction such as in the South Australian electricity market. The AER therefore proposed to develop back-up arrangements for other states and territories using Victoria's arrangements as a template, but allowing for any differences in jurisdictions' needs.

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<sup>45</sup> The problem of split postcodes was identified in a recent decision on electricity RoLRs by the ESCV. ESCV, *Electricity Retailers of Last Resort (Local Retailer Failure)*. Final Decision. October 2009.

<sup>46</sup> ESCV, *Electricity Retailers of Last Resort (Local Retailer Failure)*. Final Decision. October 2009. ESCV, *Geographic Boundaries for Gas Retailers of Last Resort*. Final Decision. September 2008. The ESCV has not established back-up RoLR arrangements for non-principal (gas) transmissions systems.

## Issues for consideration

Q 34. Should Victoria's arrangements for local retailer failures be used as a template for default RoLR failure under the national RoLR scheme? Please set out reasons why / why not.

### 5.6 RoLR Notices—Directions for gas

The AER can make directions to ensure continuity of gas supply by providing RoLRs with access to gas contracts. Where a gas retailer failure occurs and there is no declared wholesale gas market or short term trading market (or the AER considers there is not sufficient capacity or gas available in the short term trading market) then the AER may include a direction in a RoLR notice<sup>47</sup> for:

- a distributor to make available to a designated RoLR the capacity that was available, immediately before the transfer date, to the failed retailer
- a service provider for a transmission pipeline to make available to a designated RoLR the capacity that was available, immediately before the transfer date, to the failed retailer
- a producer or any other person that has contracted to sell gas to the failed retailer to make available to the designated RoLR the gas that was contracted to the failed retailer.<sup>48</sup>

Section 137 of the Retail Law specifies the terms and conditions for the transmission, distribution, sale and supply of gas and sets out other requirements such as negotiation of new contracts to replace these directions.<sup>49</sup> The AER will consult with AEMO about retailers' capabilities in the short term trading market.

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<sup>47</sup> RoLR notices form a key part of the AER's communications with stakeholders at the time of a RoLR event and are discussed more fully in the AER's issues paper on RoLR plan development.

<sup>48</sup> Section 137(1) of the Retail Law

<sup>49</sup> A gas direction may be amended under section 136(5) of the Retail Law. This may be necessary, for example, if the AER issues a direction to make gas available but the gas is not actually required.

**Issues for consideration**

Q 35. Stakeholders' views are sought on how the AER should use its powers under section 137 of the Retail Law including:

- (a) when the AER should make a direction for gas?
- (b) any circumstances in which the AER might amend (or revoke) a direction?
- (c) any consequences from the AER amending (or revoking) a direction?
- (d) any other implementation issues arising from section 137?

## Appendix A

### Information available to AER at time of RoLR event

The table below lists information which AEMO has indicated it could provide the AER to assist with the appointment of a RoLR either on a periodic basis or at the time of a RoLR event.

Electricity	Gas
Number of NMIs by retailer <ul style="list-style-type: none"> <li>• by local retailer area</li> <li>• by TNI zone</li> <li>• by postcode</li> </ul>	Number of MIRNS by retailer (2 <sup>nd</sup> tier retailer's only) <ul style="list-style-type: none"> <li>• by distribution zone</li> <li>• <i>by postcode is currently not available</i></li> </ul>
Forecast of load of retailer's customers: <ul style="list-style-type: none"> <li>• by local retailer area</li> <li>• by TNI zone</li> <li>• <i>by postcode can not be provided</i></li> </ul>	Forecast load retailer's customers (1 <sup>st</sup> and 2 <sup>nd</sup> ): <ul style="list-style-type: none"> <li>• by distribution zone</li> <li>• <i>by postcode can not be provided because there are not logical meters to provide this information</i></li> </ul>
<ul style="list-style-type: none"> <li>• Retailer prudential information</li> </ul>	<ul style="list-style-type: none"> <li>• Retailer prudential information</li> </ul>

## Appendix B

### Sample distribution of NMIs by postcode by TNI

September 2010

Sample distribution of NMIs by Postcode by TNI for Eastern (SPI) distribution network

POSTCODE	VBDL	VCBT	VER2	VGNT	VHUM	VMBT	VMWT	VRW3	VRW7	VSMT	VTS3	VT2	VWO2	VWO6	VYP1	Grand Total
3750										210						210
3751										121						121
3752								1	1	5977	1184	14				7177
3753										362						362
3754		4					2		1	6281						6288
3755										159						159
3756										3156		5				3161
3757									3	3351						3354
3758										773						773
3759											432					432
3760								2		148						150
3761								1	11	451						463
3762										84		1				85
3763										707						707
3764										3160		43				3203
3765									2618							2618
3766									591							591
3767									583							583
3770									1509	1						1510
3775									1740		32					1772
3777									4662	350		1				5013
3778										142						142
3779										232						232
3781	414	1322							38							1774
3782	40	2923							264							3227
3783	971								3							974
3785		8														8
3786		541							113							654
3787		131							387							518
3788		99							833							932
3789		133														133
3791		689														689
3792		441														441
3793		1675							94							1769
3795		4							813							817
3796									3647							3647
3797									1523							1523
3799									3185	1						3186