SUBMISSION

ESB RETAILER RELIABILITY OBLIGATION | 5 APRIL 2019

EUAA
Energy Users Association of Australia

EUAA Response to the National Electricity Rules Amendments - Retailer Reliability Obligation

Submitted via: info@esb.org.au

The Energy Users Association of Australia (EUAA) is the peak body representing Australian industrial and commercial energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing and materials processing industries. Combined, our members employ over one million Australians, pay annual energy bills in the many billions of dollars and are desperate to see a lasting national energy and climate change policy that puts downward pressure on energy costs.

The EUAA has consistently highlighted the cost to consumers of the continued energy policy uncertainty. We support the Retailer Reliability Obligation (RRO) as an important step in bringing more certainty to all stakeholders in the National Electricity Market. We congratulate the ESB on its thorough approach to developing the detail behind the RRO and the subsequent consultation process it has undertaken, all in a very tight timeframe.

The EUAA is broadly supportive of the design outlined in the Consultation Paper. We support the reliance on market incentives to provide the required level of generation and demand response to meet the reliability standard and minimise the potential requirement for RERT.

The attachment provides detailed comments, including feedback on some of the specific issues raised in the Consultation Paper.

We highlight three main concerns:

1. The fast track process being used to ensure the RRO is in place by 1st July 2019, means that it will require transitional arrangements to work and the usual consultation process for the various detailed AER and AEMC guidelines will be fast tracked; this does run the risk of "things falling through the cracks" in the haste to put arrangements in place; given this there needs to be a timely review process to ensure the framework will meet the NEO
2. The lack of flexibility offered to large users if they opt-in
3. The ability of South Australia to request a T-1 reliability instrument from 1st July 2019 and a lack of detail around how that will work given note just the lack of the relevant guidelines, but even transitional arrangements. We recognise that this is outside the ESB's current process and have begun engagement with the South Australian Government around a range of issues e.g. large customers not being able to opt-in.

We look forward to continued involvement as the ESB/AER/AEMO develop the transitional arrangements and the various Guidelines.

Andrew Richards

CEO

5 APRIL, 2019

Detailed comments on the Consultation Paper

Forecasting the reliability requirement

We welcome the increase rigor required for the AEMO ESOO and support the following changes to be applied from the 2020 ESOO:

- AEMO's ability to obtain more comprehensive information from market participants, including intended participants
- That this information be of a standard similar to that required under Part 23 of the National Gas Rules and the MT PASA
- Compliance subject to a civil penalty
- The content of the reliability forecast
- Annual performance review and improvement programme

We look forward to participating in the consultation process around the AER's Forecasting Best Practice Guideline and AEMO's Reliability Forecast Guidelines. In particular, how the AER proposes to be involved in the development of the forecasts that might lead to declaration of a T-3 event, given that the AER has limited time and limited scope in its review process.

Updating the reliability forecast

We agree with the proposed annual update in line with the existing ESOO process, with 'out of cycle' updates if, for example, there is an unexpected retirement of a generator.

Triggering the reliability obligation

We support the Option A metric – annual regional expected USE exceeds the reliability standard. We agree with the proposed timeframes for requesting and making reliability instruments. The three months' notice required for AEMO to make a T-3 or T-1 reliability instrument request is a reasonable balance between using the latest data and giving liable parties some time to ensure they have sufficient notice to put required contracts in place.

Given these timetables, we agree there is a potential mis-timing issue around the recently agreed three-year notice of closure of a generator. If a closure notice is given after the cut off for providing a T-3 notice then there is a real risk of inadequate supply, which is the very harm this rule change is designed to address. The EUAA would support this being extended to four years. This will give AEMO three months to incorporate this change into its modelling prior to any decision on whether to issue an Instrument Request.

We support the proposed parameters for the Reliability Instrument Request. In assessing the instrument request, there are always trade-offs between rigor, transparency, timeliness and cost. We are satisfied that the proposed limits on the AER's role are reasonable providing:

- The AER's Forecasting Best Practice Guideline and AEMO's Reliability Forecast Guidelines provide the appropriate rigor and transparency
- There is sufficient scope for stakeholder engagement during the forecasting process
- There is sufficient transparency during this forecasting process that stakeholders have the ability to undertake their own independent modelling and engage with, and interrogate the AEMO approach prior to the issuance of a Reliability Instrument
- The AER is closely involved with the AEMO process prior to any Instrument Request

The Consultation Paper notes (p.17):

> "The draft Rules provide that the AER will consult with stakeholders on whether the Reliability Instrument Request should be confirmed or rejected, based on these criteria. The consultation process, including timeframes, will be set out in the Reliability Instrument Guideline. The confined nature of the criteria described above means that this consultation process is not an opportunity for stakeholders to seek to interrogate AEMO's reliability forecast on technical grounds."

While not explicitly stated, we think there is merit in the ability of stakeholders to make limited scope submissions to the AER during this three-month review period.

We agree with the proposed process for correcting or withdrawing a Reliability Request and making a Reliability Instrument.

Liable entities

The EUAA was a prime advocate of the ability of large customers to opt-in. We believe that this gives these consumers the ability to assess relative costs to decide it if is better to meet any obligation themselves or ask their retailer to provide the service.

While the relatively low proposed opt-in customer consumption thresholds mean that more than 80,000 connection points would meet the criteria, we do not think that the AER should be worried about a tsunami of applications:

- Given the AER Opt-in Guideline is not expected to be finalised until June 2020, the option will not be available until the 2020/21 summer
- The vast majority of these customers are on fixed price retail contracts and will be happy to continue this and leave the complex management of RRO to their retailer so they can concentrate on their particular core business
- The obligations e.g. calculations, reporting and potential financial guarantees that come from opting-in are quite onerous, as are the PoLR penalties; only a small number of large customers have the in-house expertise and financial backing to consider opting-in.

There may be unintended consequences of having a higher threshold. It may well serve to limit sophisticated large customers with large loads in other regions for opting in where the reliability gap occurs in a region where they have only a smaller load. Maintaining the proposed "large consumer" definitions will allow these sophisticated consumers to consider opting in without the risk of a large number of applications.

We do have a concern on the proposed Opt-in Cut-off day in the draft Rules - 18 months after the T-3 Reliability Instrument is effective (i.e. 18 months prior to T), or the next possible business day. Our understanding of the annual ESOO publication date is that large customers would need to make their opt-in decision based on an ESOO that was published almost a year previously. In section 4.2, the ESB recognises that the forecast reliability gap could change substantially between ESOOs as a reason for setting a 3-month notice period for T-3 and T-1 Reliability Instrument.

Therefore, we think that large customers should be able to make their decision on the basis of similar up to date information.

While we can understand the ESB's intention to give retailers some time to adjust their contract positions prior to Contract Position Day, we would propose that, given the likely level of opting-in, retailers should not need a full 6 months to do that. Hence we would propose that consumers should be able to decide to opt-in at any time up to 3 months prior to T-1.

Finally, we do have a concern that the large consumers do not have an opt-in option under the fast track process in South Australia that allows the State Minister to make a T-1 requests from 1 July 2019. We will continue to engage with the SA Minister and his Department to suggest that there should be an opt-in cut-off day within a reasonable period after that reliability instrument being made.

Qualifying contracts and net contract position

It is possible that some large customers that opt-in may rely solely on demand management to manage their PoLR exposure. It is therefore important that all forms of demand management qualify under the RRO.

We do not support the requirement that demand management must be registered on AEMO's Demand Side Participation Information Portal (DSPIP) as these disadvantages opt-in customers who have no control over what information is posted. We believe the underlying assumption that demand management must be in the form of a contract restricts opt-in customers from being able to claim their direct ability to run on-site generation and/or reduce electricity consumption at their site during a reliability gap as being a qualifying contract. A non-registered participant has no visibility of what has been entered on the DSPIP to date.

Further, we understand the DSPIP stores static information that may be updated annually. There should be no restriction on qualifying contracts from demand management because of a mere timing issue with a registered participant either failing to update the DSPIP or unable to update the DSPIP at a time after what is required to be a qualifying contract. We do not agree that DSPIP is appropriate for opt-in customers.

In respect of the firmness methodology, we support the alternative approach set out which enables liable entities to use bespoke methodologies, subject to independent auditor confirmation, rather than default methodologies when calculating the firmness of non-standard contracts.

We look forward to participating in the AER's engagement as it develops its Contracts and Firmness Guidelines.

Grandfathering

We support the intent of the grandfathering rule but are confused by its description in both the Consultation Paper and the Draft Rules. The Consultation Paper says (p.29):

> "The draft Rules propose that this firmness factor will apply until the end of the original contract term or 1 July 2023, whichever comes later.

The Draft Rules say at Clause 11.115.8(e):

> "Paragraph (c) applies until the later of:
>
> (1) the end of the term of the transitional contract as at 10 August 2018, excluding any extension or renewal of such term even if the right to extend or renew existed as at 10 August 2018; and
>
> (2) if paragraph (a) does not apply, 1 July 2023."

So how would a three-year contract entered into on 9th August 2018 be treated? Under both, the date seems to be 1 July 2023 given it is the later than "the term of the transitional contract". But that does not make sense.

We think the confusion comes for the use of the words "the latter of" and that this can be addressed simply by saying the firmness factor of 1 applies:

- In the case of the transitional contract as at 10th August 2018 that does have a term, at the end of that term excluding any extension or renewal of such term even if the right to extend or renew existed as at 10 August 2018; and
- In the case of a transitional contract as at 10th August 2018 that does not have a term (e.g. an evergreen), the 1st July 2023

Market liquidity obligation

We support the proposed Market Liquidity Obligation framework where the MLO is compulsory and not voluntary through the ASX. We agree with the concerns expressed by the ESB around this voluntary approach. The EUAA has separately supported, along with the ACCC and the AER, a compulsory market obligation as part of the AEMC's current consideration of the ENGIE rule change request. Our members see this as particularly important in South Australia.

However, we would support a requirement for all MLO obligated parties should be required to post MLO products on the ASX – in addition to the compulsory framework. This would ensure that small retailers and opt-in customers are not required to obtain registration for multiple trading facilities (which may include onerous credit requirements and additional IT infrastructure and administration costs) in order to be able to buy qualifying contracts.

The volume of the net sales limits appears quite low to ensure market liquidity and for a start should be clearly specified to apply for every contract period separately. For a natural seller 1.25% is met quite quickly, for instance for Loy Yang A this would be ~2,300 * 1.25% = 28.75MW. Given that a seller is able to trade out of unwanted positions by raising its bid prices, the net sales limits are much too restrictive and do not provide much comfort that the MLO will be effective.

Regarding MLO reporting, we see merit in the examining the potential application of the New Zealand information model.

Permitted Adjustments

We are concerned that there appear to be no permitted adjustments for opt-in customers, nor for customers over 30MW. For example, with the former, what options would be available to an opted-in large customer which has a level of on-site self-supply if there were a major failure in that on-site generator and the customers needed to source additional power form the grid? For the latter, it seems a customer with a load over 30MW is unable to change retailers between T-1 and T. This may mean they take on their own liability to provide freedom in negotiations or they try to contract out beyond T however if there are sequential T's this will become difficult to predict and manage.

Compliance

We support the liable entity being able to make permitted adjustments to the Net Contract Position, particularly for adjustments relating to customer wins and losses. We do not believe it is appropriate to limit a liable entity on the basis of a percentage load movement over the liable entity's total load because it creates disincentives for large retailers to enter into contracts with customers if they are left unable to adjust their Net Contract Position but a small retailer would be able to adjust their Net Contract Position.

For example, if any retailer enters into a retail contract with large customer, they should be able to adjust their Net Contract Position and it should not matter what volume of load they contracted with other customers prior to the date contract with the large customer.

Having a percentage threshold apply to the retailer may have an unintended consequence of the retailer not offering contracts to large customers, particularly the smaller and unsophisticated large customers who enter the market between T-1 and T unaware of the RRO rules.

We believe how demand management was activated on the day is the relevant load for determining RRO compliance and not what was the notional amount was after applying a firming factor in the related qualifying contract. It would be more appropriate to remove the qualifying contract.

We generally agree with the proposed approach for assessing regional demand – adding back in demand response qualifying contracts but excluding additional demand response on the day. This latter exclusion will provide an important incentive to users to reduce their compliance costs and reduce potential RERT costs.

<u>Procurer of Last Resort (PoLR)</u>

We support the proposed PoLR as a cost recovery mechanism for RERT. The EUAA has been heavily involved in the current AEMC RERT review and is very supportive of the AEMC's Draft Determination.

The methodology for recovery of refunds to C&I customers is an important matter for our members. To ensure there is no reduction in the incentive for retailers to contract at T-1, we expect that the following would be the situation for a C&I customer that has not opted in – where the C&I customer's retailer:

- is liable for PoLR costs – these costs would be met by the retailer with no pass through to any customer; the C&I customer has entered into a retail contract where the retailer provides a range of services including RRO compliance; if the retailer fails to do so then this is a cost borne by the retailer's owners, not its customers
- is the recipient of a payment from AEMO reflecting its share of another liable party's PoLR costs – the C&I customer would receive a share of this refund based on its share of the demand in the trading intervals during which the PoLR cost recovery occurred.

In both cases the C&I customer would pay its share of RERT costs according to the methodology outlined in the recent AEMC Draft Determination – which we hope will be greatly reduced if not eliminated with the RRO.