Deferral of network charges

Response to AEMC's Consultation Paper

19 June 2020

Rule Change ERC0302

Energy Networks Australia

Contents

Contents		2
Key messages		3
1	Overview	3
2	Background	3
3	Demonstrated need assessment	5
4	Rule change features	10
5	Areas of required analysis	19

Key messages

- The **proposed rule requires significant modifications to be capable of promoting the long-term interests of customers** – the shifting or transfer of cash-flow risk between components of a supply chain does not represent a customer benefit.
- **Potential financeability and cash flow impacts of a**ny **final rule are strongly contingent on its design and scope**, and network business strongly recommend a **proportionate and targeted approach consistent with international approaches to address any future demonstrated need**.
- The **inclusion of retailer eligibility criteria which target need is essential** to ensure that any final rule is workable and that customers do not bear any unnecessary costs.
- It is crucial that the AEMC undertakes robust analysis about the **potential financeability and cash flow impacts and risks of shifting credit events up the energy supply chain to networks** before making any rule change that alters the risk allocation in the supply chain.
- The **costs of this risk reallocation, which will be borne by consumers, should not exceed any potential retail market competition benefits** in order to support a positive case for the rule change.

1 Overview

Energy Networks Australia appreciates the opportunity to provide a response to the Australian Energy Market Commission's (AEMC or the Commission) Consultation Paper[1] on the Australian Energy Regulator's (AER) rule change request to extend retailers' payment terms.[2] Energy Networks Australia is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia.

This submission provides our assessment of the demonstrated need for the rule change, feedback on key design and scope features of the current proposed rule, and highlights the critical areas requiring further analysis and consideration before a final rule is made. Where appropriate, ENA also proposes alternative rules drafting for the AEMC's consideration at **Appendix 2** and **Appendix 3**.

2 Background

On 6 May 2020, the AER submitted an urgent rule change request to the AEMC proposing an extension of retailers' eligible electricity network bill payment terms from 10-days to 6-months. Notably, the AER states that the proposed rule is not intended to remove the obligation on retailers to seek payment from customers, and that the direct beneficiaries of the proposed rule change are retailers that would effectively obtain a "short-term loan" from network businesses.

[1] AEMC, Deferral of network charges, Consultation paper, 28 May 2020.

[2] AER, Rule Change Proposal: Extension of time for retailers to pay network charges for eligible customers, May 2020.

The rule change request proposes amendments to Chapter 6B of the *National Electricity Rules* (NER), and applies to electricity distribution network service providers operating under the NER with the exception of those in Victoria. It does not apply to the *Northern Territory National Electricity Rules*.

2.1 Urgent rule change classification

The AEMC is treating the AER's rule change request as an urgent rule change under s. 96 of the *National Electricity Law* (NEL). The AEMC states that if the rule change request is not treated as urgent, the effective operation and administration of the wholesale electricity market would be imminently prejudiced or threatened due to the economic impact of the COVID-19 pandemic impacting the financial viability of retailers.

The AEMC Chair has stated that "if you accept that financial contagion in the market from multiple retail business failures is a plausible risk, then we have to adopt the fastest statutory timetable".[3]

The AER acknowledges that limited consultation has been undertaken in the development of its proposal, and rightly highlights that further consultation should be undertaken to determine whether narrowing the application of the scheme is desirable and appropriate.

For urgent rules made under the NEL, however, the AEMC must make a final determination within 8-weeks from the publication of the Initial Notice. There is only one round of formal consultation (for a brief 4-week period), which is contrasted with the 4 to 6-month standard rule change process that provides two opportunities for stakeholders to make formal written submissions in advance of the AEMC's draft and final determination.

2.2 Proposed extension

On 12 June 2020, Energy Networks Australia wrote to the AEMC strongly recommending that the AEMC use its discretionary powers under s. 107 of the NEL to extend the 8-week rule change period to allow time for additional analysis and consultation.[4] This request was made on the basis of:

- the number of complex design and scope features requiring further consultation, as recognised by the AER in its rule change request,
- the need for the AEMC to ensure, that in making a final rule, that the financeability of network providers is not adversely impacted, and therefore ensure that the final rule will contribute to the achievement of the National Electricity Objective, and
- the early and provisional state of current disconnections and hardship data, and the need to incorporate the trends in the data recently requested of electricity retailers to ensure that the final rule is appropriately scoped to address a demonstrated need.

[3] Foley, M. (2020) ''Financial contagion' from coronavirus may infect electricity market' The Sydney Morning Herald, 28 May, viewed 3 June 2020, <https://www.smh.com.au/politics/federal/financial-contagion-from-coronavirus-may-infect-electricity-market-20200527-p54x1w.html>.

[4] ENA, Letter to the AEMC: ERC0302 National Electricity Amendment (Deferral of Network Charges) Rule 2020, 12 June 2020.

A short extension that still provides for an accelerated entry into effect, but which avoids the customer, regulatory, commercial and legal risks of an inadequately tested solution was considered by Energy Networks Australia to best promote the long-term interests of all consumers.

In the letter, Energy Networks Australia also noted the need to ensure that the solution addresses all of the identified problem. In considering the rule change, the AEMC has highlighted that wholesale and network costs together make up almost 80 per cent of retailer costs.

If the joint magnitude of these costs is retailers' potential key payment difficulty, then a rule change that changes the payment terms for network charges but does not address wholesale cost pressures is only solving half the problem. Consideration of options that address the whole issue during the rule change process would be beneficial, although Energy Networks Australia acknowledges the legal limitations of the current rule process.

3 Demonstrated need assessment

The AER is concerned that the COVID-19 pandemic could potentially lead to multiple retailer failures, and damage consumer confidence in electricity retail markets, and therefore impact the structure and stability of the National Electricity Market (NEM). This concern stems from the potential for retailers' cash flows to be adversely affected as a result of customers' inability to pay their electricity bills.

As outlined below, however, Energy Networks Australia does not consider that there is an evidenced or demonstrated need for the rule change at this stage.

3.1 Further data is required to support multiple retailer failure risk

In the NEM customers sign up with electricity retailers for the supply of electricity, and electricity retailers in turn apply a retail margin on top of their wholesale electricity costs, network costs, environmental scheme costs, and retail costs when developing electricity tariffs.

To ensure that customers are adequately protected, electricity retailers are legally required under the *National Electricity Retail Law* (NERL) to implement a Customer Hardship Program, and provide hardship support to residential customers. A provision for customer default risk is incorporated into the electricity tariffs that retailers offer customers.

The AER's rule change request notes that the scale of disruption to customers' ability to pay electricity bills due to the economic impacts of COVID-19 remains unclear. Based on what it terms 'anecdotal evidence', the AER concludes that the situation appears to be worsening and that increasing numbers of customers are seeking assistance from retailers.[5]

[5] AER, Rule Change Proposal: Extension of time for retailers to pay network charges for eligible customers, May 2020, page 4.

The risk of multiple retailer failure is justified by the AER on the basis that:

- at the time of the AER's rule change request (May 2020), more than 20,000 electricity customers had registered for payment plans since early March 2020 and over a thousand customers per week were seeking assistance from retailers.[6]

  As shown in **Breakout Box 1**, there are 10 million residential and small business electricity customers in the NEM, with 20,000 electricity customers representing 0.2 per cent of total residential and small business electricity customers in the NEM.

- the AER's recently published *Statement of Expectations* contains a non-legally binding expectation that retailers will not disconnect residential or small business customers who may be in financial stress without their agreement before 31 July 2020.[7] This expectation is assumed to have an adverse impact on retailers' cash flows.

  However, the AER's most recent Retail Market Report, based on data prior to the COVID-19 pandemic, reports that retailers only disconnect 0.2 per cent of residential electricity customers.[8] Given this, it is expected that a significant increase in the number of residential disconnection normally requested by retailers (but not actioned due to the *Statement of Expectations*) is required prior to 31 July 2020 to have a resulting impact on retailers' cash flows.

Breakout Box 1: Retail electricity market

- There are 49 electricity retailers who supply 10 million residential and small business customers in the NEM.
- The three incumbent electricity retailers (large Tier 1) supply over 60% of these customers.
- The smallest 26 retailers in the NEM supply just 1% of these customers.
- Even in an extreme and highly unlikely scenario where half the retailers in the NEM, consisting of retailers with the smallest number of customers, exited the market, this would only increase the large Tier 1 retailers' residential and small business customer numbers by 1.4%.

Data sourced from the AER Annual Retail Markets Report 2018-19 and the ESC Victorian Energy Market

The AER wrote to electricity retailers on 17 April 2020 requesting new voluntary data requirements relating to COVID-19, citing the need for further industry information to assist the AER in supporting market resilience and protecting customers.[9] The key information requested by the AER included more regular reporting on debt levels, hardship programs and disconnections.

The AER has commenced the reporting of their 'COVID-19 Retail Market Data Dashboard', which provides a high-level summary of changes in the retail market. The AER states that the data, some of which is reported in **Breakout Box 2**, does not yet allow it to draw any specific conclusions on the effect of COVID-19.

[6] AER, Rule Change Proposal: Extension of time for retailers to pay network charges for eligible customers, May 2020, page 2.

[7] AER, Statement of Expectations of energy businesses: Protecting consumers and the market during COVID-19, 9 April 2020.

[8] AER, Retail Markets Quarterly: Q2 2019-20, March 2020, page 10.

[9] AER Chair, Letter to retailers – New data reporting requirements relating to COVID-19, 17 April 2020.

This is due to the incomplete nature of the datasets, the lag with debt levels, and the possibility that some of metrics do not pick up alternative deferred payment options being offered by some retailers.

However, the AER reached the following conclusions based on the reported data:[10]

- the number of customers on hardship programs and average hardship debt have both remained steady (contrary to the AER's expectations). The AER notes that anecdotally it has heard that some retailers are offering deferred payment arrangements rather than placing customers on formal hardship arrangements,
- the number of customers on payment plans is roughly the same level as at Q2 2019-20 baseline data. The AER notes, however, that deferred payment arrangements offered by some retailers as a result of COVID-19 won't be captured by their definition of reported payment plans,
- Tier 2 retailers have a higher proportion of residential customers in debt than Tier 1 retailers, and the number of customers in debt has increased since March 2020, and
- in line with the *Statement of Expectations*, the AER expected there would be a pause in credit collections and defaults. However, retailers are still referring customers to credit collections.

Breakout Box 2: AER COVID-19 Retail Market Data Dashboard

- 0.87% of electricity customers are on hardship programs → 0.03 percentage point decrease since Q2 2019-20.
- 1.48% of customers are on payment plans → 0.12 percentage point decrease since Q2 2019-20.
- 0.01% of customers credit defaulted → 0.09 percentage point decrease since Q2 2019-20.

Data sourced from the AER's Retailer market data dashboard – 01 June 2020 – COVID-19

With the data currently available, it is difficult to form the conclusion that there is a credible imminent risk of multiple retail business failures. These retail business failures would then need to be sufficiently large to have a material impact on the effectiveness of retail competition.

Recommendation #1

The scope of the final rule needs to reflect the trends in the data recently requested of electricity retailers to ensure that it is appropriately scoped to address a demonstrated need.

3.2 RoLR scheme has not been demonstrated to be deficient

Under the Retail Law, the AER is responsible for overseeing the national Retailer of Last Resort (RoLR) scheme. The RoLR scheme is designed to ensure that in the event of retailer failure, customers continue to receive electricity and/or gas supply and payments continue to be made to generators through the wholesale market. The AER appoints and registers default RoLRs, and assesses applications for registration of additional RoLRs on a firm and non-firm basis.

[10] AER, Retailer market data dashboard – 18 May 2020 – COVID-19, 4 June 2020,
AER, Retailer market data dashboard – 25 May 2020 – COVID-19, 11 June 2020, and
AER, Retailer market data dashboard – 01 June 2020 – COVID-19, 18 June 2020.

The AEMC's principal concern appears to be that the design of the AER's RoLR scheme is not sufficiently flexible to withstand multiple retailer failures in the short term. There is a specific concern that the triggering of RoLR events could lead to a circumstance of 'financial contagion' in the NEM, potentially resulting in cascading electricity retailer failures that threaten the effective operation of the wholesale market.

In the Consultation Paper, the AEMC notes that they recommended a number of changes to the RoLR scheme in its NEM financial market resilience review that have been left unactioned.[11] These recommendations, however, were focused on having in place adequate mechanisms to respond and manage the failure of a large NEM participant. The delays associated with taking these reforms forward do not appear to have a clear link to considerations around the current rule change proposal.

In its review of NEM resilience the AEMC has concluded that application of the RoLR scheme in its current form *could* cause financial contagion *only if* the failed retailer had a significant customer base. If a large retailer experiences financial stress, triggering the RoLR scheme, NEM financial security could be threatened.[12]

On the other hand, where a small retailer fails, the AEMC concluded in its NEM financial market resilience report that any financial obligations may be absorbed relatively easily by the designated RoLR.[13]

Given available data it remains unclear what plausible circumstances could trigger the 'financial contagion' discussed in the Consultation Paper. As shown in **Breakout Box 1**, in an extremely severe set of circumstance, where *half* the retailers in the NEM, consisting of retailers with the smallest number of customers, exited the market, this would only increase the large Tier 1 retailers' collective residential and small business customer numbers by 1.4 per cent and would not threaten the operation of the wholesale market.

In addition, in the very unlikely situation that one of the top 10 retailers (*excluding* the three Tier 1 retailers) was to fail, which includes those with government ownership, it would increase the large Tier 1 retailers' collective residential and small business customer numbers by only 5 per cent (based on average customer numbers).

[11] AEMC, Deferral of network charges, Consultation paper, 28 May 2020, page 23.

[12] AEMC, NEM financial market resilience, Final report, 6 March 2015, page 26.

[13] AEMC, NEM financial market resilience, Final report, 6 March 2015, page 28.

More broadly, there does not appear to be emerging risk of large-scale changed retail patterns of credit risk for large Tier 1 retailers. This understanding is reinforced by the current public market postures of major energy retailers. AGL are currently engaged in share repurchasing program, which is having the effect of actively reducing their equity buffers. This is a clear market signal that they do not anticipate significant shocks. Additionally, Origin Energy recently choose not to alter 2019-20 financial year earnings guidance, and recently undertook a major overseas acquisition – purchasing a stake in Octopus for approximately $500 million. As part of this transaction, Origin itself entered into working capital guarantees in favour of its new equity partner, underwriting its access to working capital.

> *"In any crisis preparedness is crucial, and so AGL has run a multitude of severe scenarios to test the strength of our liquidity and credit metrics under stress.* ***Even in the most prolonged and severe scenario analysis our liquidity and headroom is sufficient and we understand the business levers we can pull if necessary.***"
>
> Source: AGL Investor Briefing, 5 May 2020.

Recommendation #2

If there are significant concerns about the capacity and operation of the RoLR scheme, it should be subject to a comprehensive review or the COAG Energy Council should implement the recommendations of the NEM financial market resilience review.

3.3 Support is being provided already by both Governments and industry

In addition to over $70 billon of Federal income support schemes, a range of comprehensive State Government energy packages have been announced to support electricity customers impacted by COVID-19, as outlined in **Appendix 1**.

Furthermore, the network sector has acted to proactively recognise the potential impacts of the COVID-19 pandemic, including through preparation and current implementation of a targeted COVID-19 Electricity and Gas Network Relief Package. This is presently being implemented in a collaborative arrangement involving detailed implementation work by energy retailers and networks across most of the NEM.

The impact of the Government and industry packages – particularly on how they might mitigate the actual risks of retailer defaults – are yet to be seen. However, the AER in its 2020-21 Default Market Offer final decision, which did *not* adjust for COVID-19 cost impacts, states that these packages should have a direct positive impact on potential cost increases related to bad debt and other costs for managing financially vulnerable customers that retailers may face.[14]

The Commission's decisions on the requirement for, and scope of, any rule change need to be undertaken with a clear and prospective view of the range of other direct policy interventions that are likely to impact on the need to undertake a rapid and unprecedented reassignment of cashflow risk from one part of the energy supply chain to another, with all consequent risks this step would potentially entail.

[14] AER, Default Market Offer Prices 2020-21, Final Determination, 30 April 2020, page 22.

4 Rule change features

As outlined in Section 3, Energy Networks Australia does not consider that there is an evidenced or demonstrated need for the rule change at this stage. We do support rule change development being undertaken with a view to the potential emergence of a need.

However, if the AEMC finds evidence of a material issue to be addressed, the proposed rule requires significant modifications to clearly promote the long-term interests of consumers; the transfer of cash-flow risk is not a consumer benefit.

In this section, Energy Networks Australia provides some scope and design recommendations to ensure that, if made, the rule change is targeted and proportionate, along with the recommended inclusion of clear public policy transparency measures.

4.1 NEO and customer benefit

The AER rule proposal indicates customers will be 'indirect' beneficiaries of a rule amendment which has the practical impact of providing assistance to electricity retail businesses. This assistance is rendered in the form of a forced provision of 'short-term loans' from network businesses to electricity retailers, which increases the liquidity risks for network businesses

There are critical potential impacts of the proposed rule change arising from this forced loan provision that go directly to the long-term interests of customers which are not sufficiently examined or considered in the original proposal. These need to be fully evaluated in the Commission's review process.

These are:

- **Shifting cashflow risk may result in customers just paying more** – If the AER rule change leads to higher debt costs or charges, to underwrite the participation of retailers that may fail shortly after the expiry of the deferral period, there is a risk of current and future customers paying more for no net benefit.
- **Shifting cashflow risk does not necessarily result in an offsetting customer benefit** – Meeting the objective of keeping prices at the lowest sustainable levels over time for customers it is not simply a question of reducing risk for operators in competitive retail markets. Rather, it is equally critical that electricity distribution and transmission companies are liquid and able to stably maintain benchmark credit metrics. Customer reap tangible cost benefits from financial stability across the whole electricity supply chain.

The rule change proposal accepts that customers are likely to ultimately meet the cost of this direct shift along the supply chain of retailer cashflow risk.

4.1.1 Customer benefit from maintenance of competition

The rule change proposal posits that a forced short-term provision of credit is an appropriate regulatory policy measure to adopt to avoid multiple retailer failures during the defined period of the scheme, as maintaining the current level and structure of retail market competition is of benefit to all customers.

Establishing this proposition in the current circumstances would appear to require an empirical assessment of the benefits of a competitive retail market 'with and without' the policy intervention proposed. This assessment should be undertaken to ensure clear customer benefit delivered from any rule change.

In traditional competition policy assessment processes, a clear distinction is usually drawn between the goals of interventions that have the effect of protecting competition, and interventions which protect individual competitors. This focus on protecting competition, rather than individual competitors, for the benefit of customers underpin both recent ACCC retail market reviews, and the introduction of the AER's default market offer framework.

4.1.2 Incentives to provide hardship plans

In the AER's rule change request customers are said to be 'indirect' beneficiaries of the proposed rule, because these short-term loans may lead to retailers being more inclined to offer hardship plans. It is important that the Commission also applies a 'with and without' assessment of this claimed benefit.

Energy Networks Australia understands that the provision of appropriate hardship plans is an existing regulatory obligation that applies to all retailers that would be assisted by this rule change. Clearly, it is not a relevant benefit for the purposes of the long-term interests of consumers that financial assistance from other parties might make the recipient of that assistance more 'inclined' to discharge its existing legal obligations.

4.2 Design and scope of rule change

The potential financeability and cash flow impact on network businesses, costs which are ultimately borne by customers, is strongly contingent on the design and scope of the final rule, and network businesses strongly recommend a proportionate and targeted approach that addresses a demonstrated need.

This section below discusses the critical design and scoping choices which the Commission would need to consider in the making of any final rule. Further discussion on the materiality of these decisions is highlighted in the following section (see Section 5.2), and where appropriate, Rules drafting is provided for the Commission's consideration at **Appendix 2 and Appendix 3**.

4.2.1 Retailer eligibility

The AER's rule change proposal envisages support for all electricity retailer businesses, regardless of size or capacity to absorb potential future credit or default risks.

The AER notes, however, the potential merit in limiting the application of the scheme to only those retailers facing financial stress. The AER's proposal included possible options of how that could be achieved, for example by excluding the largest and most well-established retailers, excluding those with strong balance sheets, or excluding government-owned retailers, but recognises that further consultation is required.

Both the New Zealand Electricity Authority (NZ EA) and the Office of Gas and Electricity Markets (Ofgem) in the United Kingdom have released details of their own support measures for retailers during the COVID-19 pandemic.

As shown in **Breakout Box 3**, the schemes' retailer eligibility requirements are targeted, and apply only to a subset of retailers that have a demonstrated need for such support.

To best target the support, these schemes exclude retailers who are able to access alternative sources of liquidity, and have a number of other characteristics such as independent verification to confirm retailer eligibility in the NZ EA scheme, and Ofgem's expectation that no dividends or executive bonuses would be paid out by the retailers until the deferred charges plus interest are repaid.

The NZ EA also explicitly notes that its scheme is not intended for retailers that were already in financial difficulty before the COVID-19 pandemic, where support through the scheme is likely to result in more unpaid debt within the sector.[15]

In addition, there is an emphasis on ensuring the viability of impacted network businesses. For example, in the Ofgem scheme, the inclusion of scheme caps and interest on deferred charges, along with the ability to cease participation if the network business would breach any of its financial covenants by continuing to provide the scheme. The NZ EA scheme is also limited to the six largest distribution network service providers (DNSPs).

Breakout Box 3: NZ & UK Retailer Support Schemes

Ofgem – UK

- Retailers are ineligible for the scheme if they or any company in their corporate group have an investment grade credit rating.
- Deferred payments incur interest (~8%) to incentivise retailers to only defer as much as is necessary.
- Retailers expected not to pay dividends or executive bonuses until deferred charges plus interest are repaid.
- The scheme must be proportionately sized so network's ability to comply with its financial covenants and credit metrics is not threatened – caps on the scheme are in place.
- A network would cease participating in the scheme if any network entity in a group would breach any of its financial covenants by continuing to provide the scheme.

Electricity Authority - NZ

- Eligibility limited to retailers verified as materially impacted by overdue debt (≥25% increase) who cannot access other financial support.
- Retailers capable of drawing on shareholder support or other facilities excluded.
- Independent certification of the financial position of prospective retailers will be required for the NZ EA to confirm retailer eligibility.

Information sourced from Ofgem and NZ EA.

4.2.1.1 *Criteria for eligibility*

The AEMC propose a number of potential criteria for retailer eligibility, including:

- excluding certain retailers from deferring the payment of network charges by listing them (option one),
- imposing appropriate preconditions on retailers' ability to defer the payment of network charges, noting the NZ EA scheme as an example (option two), or

[15] New Zealand Electricity Authority, COVID-19 Authority Updates – May 2020.

- designing the deferral mechanism in a way that imposes appropriate incentives on retailers (option three).

Energy Networks Australia strongly recommends the adoption of retailer eligibility criteria in the final rule so as to limit it to those retailers with an independently verified demonstrated need for such support (i.e. adoption of option two).

This is considered a more transparent, certain and evidenced based approach than the application of a sufficiently high interest rate that is designed to disincentivise retailers to access the scheme (option three). There are concerns about the appropriate setting of that interest rate, and whether the rate needed to disincentives retailers would then unfairly penalise other retailers who may have a demonstrated need.

In addition, option two avoids the potential discriminatory concerns of option one by listing clear eligibility criteria linking to a demonstrated need, rather than excluding listed named retailers from the scheme. The AER's *Statement of Expectations* is also an important influencing factor, and the adoption of retailer eligibility criteria allows it to be considered when assessing need.

It should be clearly established that access to capital from debt or equity providers or related entities disqualifies retailers from support under the rule, as per the NZ EA scheme referenced by the Commission. Energy Networks Australia also recommends disqualifying government owned retailers on that basis as well.

Retailers should also only qualify for support under the final rule if they are assessed to meet objective criteria that demonstrate (to an independent assessor) both real risk of financial distress, and that they will remain viable during the period if support is provided.

If retailers will be unviable despite cash flow support provided under the final rule, then they should not receive assistance as this cost will ultimately fall on consumers to support them with no compensating benefit in terms of preservation of retail competition.

This targeting is consistent with differentiating between retailers' capacity to absorb and manage risk, something recognised in the existing RoLR scheme. Providing an undifferentiated level of balance sheet support regardless of demonstrated need is not consistent with an appropriate targeted or proportionate regulatory policy response.

Recommendation #3

The final rule should adopt retailer eligibility criteria so as to limit it to only those retailers with an independently verified demonstrated need for such support. The assessment process should also require proof that the retailer is likely to remain viable if the cash flow support is provided.

Energy Networks Australia has proposed Rules drafting for the AEMC's consideration at **Appendix 2 – Item 1**.

4.2.2 Revenue deferral eligibility

Under the rule change proposed by the AER, network charges payable by retailers are extended where, amongst other things, a retailer has entered into a "Covid-19 customer arrangement" with a customer.

In the AER's proposed rule, a Covid-19 customer arrangement applies to four types of arrangement entered into in the period commencing 1 March 2020 and ending 31 December 2020:

a) Arrangements with hardship customers as defined in the NERL. Under the NERL, hardship customers are residential customers.

b) Payment plans, which concept is defined by reference to its definition in the NERL and *National Electricity Retail Rules* (NERR). Under the NERL, a payment plan is an arrangement with a residential customer.

c) Instalment arrangements – which is also said to have the meaning given to it in the NERL and NERR. However, this is not a separately defined concept in the NERL and NERR. The term instalment arrangement is used (but not defined) in the NERR and appears to be simply a subset of payment plans or other hardship arrangements for residential customers.

d) Deferred debt arrangements, which are defined in the proposed rule as "any arrangement by which the payment of a debt owed or expected to be owed by a shared customer to a retailer for the supply of energy is deferred".

As recognised by the AEMC, the AER's proposed "deferred debt arrangement" definition is broad, and could capture any type of customer including large commercial and industrial customers.

Energy Networks Australia considers that the final rule should define a deferred debt arrangement as applying to both residential and small business customers.[16]

Deferral of large commercial and industrial customers network charges is not considered appropriate, and may introduce moral hazard. The AER's *Statement of Expectations*, a significant driver for the AER in submitting this rule change, does not limit retailers from disconnecting large customers for non-payment.[17] In addition, the cash flow impact and associated risk to retailers for large customers is likely reduced as retailers can hold security that they can draw upon due to a large customer's non-payment.

Recommendation #4

The final rule should define a deferred debt arrangement as applying to small customers (i.e. residential and small business customers).

Energy Networks Australia has proposed alternative Rules drafting for the AEMC's consideration at **Appendix 2 – Item 2**.

4.2.3 Interest on deferred revenue

In accordance of with Accounting Standard AASB 15, revenue is recognised in the period that the good/service was provided, regardless of when the cash is paid. The same methodology is required to be applied in network businesses' Regulatory Information Notices, and in revenue reported in annual pricing proposals through the unders and overs account mechanism.

[16] The COVID-19 Electricity and Gas Network Relief Package defined small business customers are those consuming less than or equal to 40 MWh per annum.

[17] Except where that customer is on-selling energy to residential or small business customers, for example in residential parks or retirement villages.

Therefore, the annual pricing proposal process will not allow for network service providers to recover the time value of money on revenue that has been deferred *between* regulatory years.

The AEMC acknowledges that the proposed deferral mechanism would have an impact on network businesses' cash flows, and may result in network businesses incurring additional financing costs, result in credit rating risks, or challenges borrowing funds.

In recognition of additional financing costs that network businesses would incur as a result it of its rule change request, and to ensure that network businesses recover their efficient costs, the AER has raised the option of deferred revenue being subject to interest.

Network businesses consider this cost recovery mechanism should be incorporated into the final rule change, and consider it a more practical approach than developing a bespoke cost pass through event with a zero-materiality threshold.

Recommendation #5

The final rule should allow for the application of interest on deferred payments over 10 days set at a level consistent with financing costs, i.e. the applicable weighted average cost of capital.

Energy Networks Australia has proposed Rules drafting for the AEMC's consideration at **Appendix 2 – Item 3**.

4.2.4 TNSP charges

DNSPs invoice retailers Network Use of System (NUOS) charges, which are made up of Distribution Use of System (DUOS) charges and Transmission Use of System (TUOS) charges. The AER's rule change request proposes to defer DNSPs' NUOS revenue to provide cash flow support to retailers, and suggests that 'distribution networks would in turn withhold a reasonable amount from transmission networks to account for transmission charge deferrals'.[18]

The rule change request, however, did not outline how this would work in practice, and the AER's proposed Rules drafting did not address this issue.

Energy Networks Australia recommends that a transitional Rule is made under Chapter 11 of the NER whereby the Rules:

- establish the principle that where a DNSP is required to defer the recovery of NUOS charges from an eligible retailer under the amending Rule then the Transmission Network Service Provider (TNSP) will defer recovery of the TUOS component of the deferred NUOS from the relevant DNSP for the same period (with the application of interest if applicable), and
- require the transmission and distribution businesses to negotiate in good faith to implement arrangements that the reflect that principle as soon as practicable after the amending rule is made.

This would allow for equivalent arrangements to the voluntary COVID-19 Electricity and Gas Network Relief Package to be agreed between the parties, allowing for tailored arrangements in each jurisdiction as required.

[18] AER, Rule Change Proposal: Extension of time for retailers to pay network charges for eligible customers, May 2020, page 2.

Recommendation #6

The final rule should include a transitional Rule under Chapter 11 that defers eligible TUOS for the same period as the NUOS deferral.

4.2.5 Symmetrical obligations

The AER's recently published *Statement of Expectations* contains a non-legally binding expectation that retailers will not disconnect residential or small business customers who may be in financial stress without their agreement before 31 July 2020. This expectation is assumed to have an adverse impact on retailers' cash flows, and is a significant impetus for the AER's rule change request.

Therefore, if the AEMC proceeds with the making of a final rule that provides cash flow support to retailers, it should give consideration to how complementary legally binding obligations on retailers not to disconnect residential and small business customers for the period for which the final rule applies can be made to ensure the design promotes customers' best interests.

Otherwise the final rule will allow for the scenario of retailers receiving cash flow support, with the costs borne by all customers, whilst also simultaneously having the full capacity and discretion to disconnect those same customers for non-payment.

It is not consistent with the principles of regulatory transparency, or predictability for binding obligations on one party to be introduced which are linked to and justified by non-binding obligations placed on another party. Rather, both the originating obligation (to not disconnect), and the inter-linked consequential obligation should be applied in consistent legal form.

Recommendation #7

Consideration should be given to how legal obligations can be placed on retailers to not disconnect residential and small business customers for the period for which the final rule applies. At the minimum, the AER's *Statement of Expectations* with regards to retailer disconnections should be extended for the period for which the final rule applies.

4.2.6 Verification

Under the current Rules drafting, there is no obligation on the retailer to provide any information to the DNSP to substantiate that a customer is the subject of a 'Covid-19 customer arrangement' when requesting revenue deferrals. Energy Networks Australia recommends that the final rule require the retailer to submit a statutory declaration, signed by either the retailer's Chief Executive Officer or Chief Financial Officer, confirming that the revenue deferral request is in accordance with the definitions outlined in the final rule.

This will place minimal resource or cost burden on the retailer but will provide a level of transparency to the scheme that is currently lacking in the proposed Rules drafting.

Recommendation #8

The final rule should place a requirement on the retailer to submit a statutory declaration with revenue deferral requests.

4.2.7 Drafting clarity

To provide additional clarity, Energy Networks Australia has proposed alternative Rules drafting for the AEMC's consideration at **Appendix 2**.

In particular:

- Items 4(a) and 4(b) of Appendix 2 provides amendments to the invoice dispute resolution and credit support sections as the current proposed Rules drafting does not recognise that there are now two payment dates, and
- Items 5(a) and 5(b) of Appendix 2 makes it clear that the deferred revenue applies to invoices for NUOS charges issued between 1 July 2020 and 30 December 2020.

  Energy Networks Australia recognises that this timeframe may need to shift slightly to accommodate the development of the final rule.

Recommendation #9

To ensure clarity, the final rule should incorporate the proposed drafting amendments found at **Item 4(a), Item 4(b), Item 5(a) and Item 5(b) of Appendix 2**.

4.3 Transparency measures

4.3.1 Measures to support implementation assessment

In the proposed rule change application, the AER indicates that it has been designed to address a potential future set of circumstances, based on anecdotal evidence and a hypothesis of contingent risks to the wholesale and retail market.

In the light of the extraordinary measures proposed, it is important for all energy market stakeholders, and energy market institutions themselves to have transparency and a clear evidentiary base of the actual impact of the proposed rule – which effectively transfers cashflow risk from one set of market participant to another.

The AER should be required to prepare a report at the end of the deferral period assistance that identifies:

- an estimate of the total net financial cashflow benefit provided to energy retailers under the rule arrangements,
- any material discrepancies in the operation of the scheme,
- any retail firm that has implemented disconnection and hardship approaches that are materially inconsistent with the AER's *Statement of Expectations* and rule requirements, and
- an assessment of the degree to which the scheme achieved the stated objectives.

In the absence of such transparency measures, there will be a lack of clear and definitive evidence as to whether the rule proposal promoted outcomes consistent with the National Electricity Objective. Customers would not be in an informed position to understand the scope and extent to which retailers were assisted, assistance ultimately provided at a cost to customers.

The implementation of a more preferable rule with these transparency safeguards would capture an opportunity to observe in a systematic way the impact the rule, to inform all parties and future policy considerations.

Recommendation #10

The final rule should include transparency protections, post-implementation assessment and identify the actual impact of the measure.

Energy Networks Australia has proposed Rules drafting for the AEMC's consideration at **Appendix 2 – Item 6**.

4.3.2 Review and extension of period of deferral

The proposed rule change includes a broad provision that where the AER considers it 'reasonably necessary', the effect of the rule change can be extended for a further period.

Any further extension may be made provided at any time up to the expiration of the period by publishing a notice on its website.

Due to the significant reassignment of cashflow and liquidity risks inherent in the proposed rule change, there is a strong need for any extension decision to be:

- based on clear and relevant principles and decision criteria,
- supported by reasons and evidence of the underlying policy objectives being positively supported by its continuance,
- adequately consulted on with relevant market participants, and
- made in a timely, predictable and transparent manner to enable all market participants and directly affected network businesses to put in place any required supporting commercial financing and other resourcing required.

The existing NER embeds the approach that significant determination processes (such as guidelines, network determinations) that directly affect the operation of regulated network businesses should be guided by clear principles and defined by clear procedural requirements.

This extension should be available on a once-off basis only for a 6-month extension. This provides ample time for policy makers, governments, energy market institutions, regulators, consumers and network businesses to consider any required future arrangements in the event of a sustained period of challenges to the overall financial resilience of the market.

Recommendation #11

The final rule should be a clearly temporary and time-limited measure, with transparent decision criteria for its extension.

Energy Networks Australia has proposed Rules drafting for the AEMC's consideration at **Appendix 2 – Item 7**.

5 Areas of required analysis

This section outlines areas of required analysis that Energy Networks Australia considers essential in the making of any final rule. It is crucial that the AEMC has full information about the potential financeability and cash flow impacts and risks of shifting credit events up the energy supply chain to networks before making any rule change that alters the risk allocation in the market.

5.1 Framework risk allocation

The rule change proposes to temporarily alter the existing cashflow and risk allocations arrangements of the current electricity supply chain across the market.

Any revised arrangements through the current rule change process need to continue to provide an internally consistent risk compensation framework that is capable of supporting outcomes in the long-term interests of consumers. Key elements of this risk allocation framework which the AEMC need to consider are:

- **No compensation of relevant risks under the allowed rate of return** – the rate of return as determined and set by the AER under the 2018 Rate of Return Instrument and previous instruments unambiguously include no compensation for the types of liquidity and market cashflow risks introduced by the provision of retailer assistance through deferred payment terms.
- **Credit support arrangements** – the AEMC's review of credit support arrangements are also designed with the explicit premise of network businesses having limited capacity to manage the credit risks of electricity retailers.
- **Retailer of last resort arrangements** – under retailer of last resort provisions it is it is a matter of deliberate policy design from all NEM jurisdictions that networks should not assume credit risks and default risks associated with energy retailers entering financial distress or ceasing trading.

It is noted that key elements of this risk allocation framework (such as the Rate of Return Instrument, and retailer of last resort schemes) cannot be altered by AEMC rule making functions. This reinforces the importance of any rulemaking in this area being consistent and coherently implementable in the light of these fixed legislative provisions or instruments.

Practically, this means that any risks and costs introduced by these rules need to be addressed in a comprehensive manner in such a way as to not undermine the existing risk compact. This risk allocation compact is critical to the ability of networks to access efficient financing, reducing the cost to deliver network services.

5.2 Assessing the cashflow and financeability risks

5.2.1 Summary of Frontier Economics model findings

The AER rule change proposal as lodged would result in potentially material cashflow and financeability impacts for network businesses.

Energy Networks Australia understands AEMC has been provided with direct briefings and information from a number of network businesses relating to the projected actual cashflow impacts of the rule change proposal being delivered.

Energy Networks Australia has also provided an indicative modelling tool based on publicly available data of the cashflow and financeability that provided indicative impacts of a variety of potential scoping and design choices available to the Commission.

This model estimates the impact on a median 'benchmark' network business, for example, of a broadly scoped rule change with automatic eligibility regardless of size which would provide forced cashflow assistance in the form of short-term loans to Australia's largest publicly listed, vertically integrated, investment grade retail businesses.

The key findings from the benchmark modelling are that:

- on a benchmark efficient basis, distribution networks are already under considerable financeability and cashflow strain under existing AER's regulatory allowances – this arises in particular due to combined interaction of unprecedented macro-economic conditions and current AER methodologies for calculating the required return on equity and expected inflation.
- the rule change as lodged could make this financeability and cashflow 'starting position' much worse.
- the real world financeability and cashflow risks posed by a widely scoped rule change would not necessarily be apparent from examination of traditional financeability metrics alone, as these do not typically account for the impact of cash flow deferrals.
- a widely scoped rule change (for example, inclusive of major retailers not in demonstrated need of cashflow assistance) has the material risk of causing networks to breach debt covenants through the violation of important cashflow metrics – such as cashflow coverage ratios. This risk is recognised in Ofgem's scheme, and an allowance is made for support to be removed by a given network company if at any time any entity in that network company's group would breach any of its financial covenants by continuing to provide support.[19]
- consequences of such breaches can be very serious – including limiting ability of a network to secure future finance, or to refinance on reasonable terms.
- the financeability and cashflow risk consequences for the benchmark network firm are sensitive to the design choices and scoping of any final rule.

This modelling – supplemented by further AEMC analysis discussed below – should be critical elements in the final decisions made by the Commission on the design of any final rule, and the appropriate period of analysis and consultation prior to its being formally made.

[19] Office of Gas and Electricity Markets, Open letter on relaxing network charge payment terms, 2 June 2020, page 4.

5.2.2 Further analysis is needed before any changes impacting network cashflows

In making any final or preferable rule, as discussed above, an essential analytical requirement is an assessment of the cashflow and financeability impacts of the rule.

This should encompass the particular scope decisions adopted in any rule, as well as a series of plausible economic scenarios occurring across the potential period of operation.

There are two important connected elements of this analysis.

These two aspects are addressed in the question: would the defined scope, when combined with a plausible set of economic scenarios result in cashflow, liquidity or other financing risks for:

a. any *actual* network service provider impacted by the rule that cannot be efficiently commercial managed.
b. a *benchmark efficient entity* – i.e. a network service provider sharing the financing characteristics that are assumed under the binding Rate of Return Instrument.

To produce outcomes consistent with the long-term interests of consumers, any rule must be based on clear empirical evidence that a temporary reallocation of cashflow risks will not present unmanageable commercial risks either to actual network service providers, or a benchmark firm required to provide this short-term loan.

In conducting this analysis, the AEMC should consider the full potential financeability and cash flow impacts and risks of shifting credit events up the energy supply chain to networks.

Further, in order to support a positive case for the rule change, evidence should be provided by the proponent that the costs of this risk reallocation, which will be borne by customers, do not exceed any potential retail market competition benefits.

Recommendation #12

In making any final rule, the AEMC should undertake rigorous financeability and cash flow impact analysis and ensure that the risk reallocation costs do not exceed any potential retail competition benefits.

Appendix 1 I State Government energy support packages

Table A1: Summary of State Government energy support packages

State	Date	Summary	Link
QLD	24-Mar	$300m package, 2.1 million households* » Automatic $100 off residential electricity bill. » $500 rebate for small and medium sized businesses. *Updated 27 May to include 2.1m households vs 2m	Link Link (2.1m households)
NSW	27-Apr	Residential rebate of $400 per account (gas, elec) per 6 months → equates to a $1,600 annual benefit to households with electricity and gas. *Note - Voluntary Network Relief Package applies*	Link
VIC		*Note - Voluntary Network Relief Package applies*	
SA		*Note - Voluntary Network Relief Package applies*	
TAS	27-Mar	» Energy prices will not increase for 12 months. » First quarterly bill after 1 April will be waived for small business and community service organisations.	Link
ACT	20 Mar	» Residential utility concession holders will receive a $200 rebate. » Small businesses who lease will receive a $750 rebate on power bills.	Link
WA	31-Mar	» Energy Assistance Package payments to concession card holders have increased from $305 to $610. » Small businesses will be rebated $2,500 if they consume less than 50 MWh pa. Available if you're a customer as of 31 Mar, payable from 1 May. » No residential electricity tariff increases in 2020-21.	Link Link
NT	22-Apr	» Energy bills cut by 50% (regulated utility tariffs) for 6 months for businesses that demonstrate COVID-19 induced hardship. » No increase in power prices in 2020-21.	Link

Appendix 2 I Proposed Rules drafting

Item	Issue	Suggested Drafting	Rationale
1	**Retailer Eligibility**	Insert the following as rule 6B.A3.10. "**Retailer Eligibility** (a) This Division 4 only applies to a *retailer* who has been approved by the *AER* as a *retailer* to whom this Division 4 should apply. (b) A *retailer* may not be approved by the *AER* for the purposes of this Division 4 if: (1) their securities are listed on the Australian Securities Exchange or an internationally recognised securities exchange; or (2) they are a *related body corporate* of (or otherwise controlled by) an entity whose securities are listed on the Australian Securities Exchange or an internationally recognised securities exchange; or (3) the *retailer* is owned or controlled by a government or government agency, including without limitation because the *retailer* has one or more shareholders who are Ministers of the Crown or the *retailer* is established under statute or is controlled by a body whose shareholders are Ministers of the Crown or which is established under statute. (c) A *retailer* may only be approved by the *AER* for the purposes of this Division 4 if:	Division 4 will place a significant financial burden upon distribution network service providers. The purpose of this new clause is to ensure the protection of Division 4 is only extended to retailers who require the protection of the Division and who will benefit from the protection of the Division. It is submitted listed entities and their related bodies corporate should not require the protection of the Division. Neither should government owned retailers. In addition, a retailer should only be entitled to the protection of the Division if an independent auditor certifies: (a) the retailer has significant liquidity problems attributable to COVID-19; (b) the retailer does not otherwise have access to funds to address these liquidity issues; (c) if the Division 4 protection is extended to the retailer, they are more likely than not to remain solvent (as there is no point in allowing an entity which is insolvent or potentially insolvent to simply accumulate more debt which will not be paid). The retailer should also be required to undertake to the AER it will not pay dividends, distribute capital or pay executive performance bonuses. Funds which may be available to pay a

Item	Issue	Suggested Drafting	Rationale
		(1) the *retailer* undertakes to the *AER* the *retailer* (and any holding company of the *retailer* as defined in the Corporations Act 2001) will not declare or pay any dividends, otherwise reduce its share capital or equity or pay any performance bonuses to its executives until such time as all *network charges* and interest to which Division 4 applies have been paid in full to the relevant *Distribution Network Service Providers*; (2) an independent auditor approved by the *AER* has certified that in the auditor's opinion formed after due enquiry in accordance with generally accepted auditing standards: (i) the *retailer* is, in the next 6 months following the date of the auditor's certificate, likely to have significant liquidity problems; (ii) those liquidity problems have arisen (or will arise) due to the impact of COVID-19 on the *retailer* or its *customers* (including compliance by the *retailer* with the *AER*'s 27 March 2020 and 9 April 2020 "Statement of Expectations of energy businesses: Protecting consumers and the market during COVID-19" and any instances of non-compliance"); (iii) those liquidity issues are not reasonably able to be addressed by the *retailer* obtaining a capital injection or loan from a *related body corporate*;	distribution network service provider should not be allocated to these alternate purposes.

Item	Issue	Suggested Drafting	Rationale
		(iv) the *retailer* is not insolvent (within the meaning of the *Corporations Act 2001)* and it is more likely than not the *retailer* will not become insolvent within the next 12 months if Division 4 applies to the *retailer*."	
2	**Revenue deferral eligibility**	Insert the following as clause 6B.A3.7(c) "A *Covid-19 customer arrangement* does not include any arrangement or plan between a *retailer* and a *shared customer* which *shared customer*: (1) is not a residential customer; and (2) has an annual electricity consumption of more than 40 MWh per annum." Insert at the beginning of clause 6B.A3.7 the words: "Subject to clause 6B.A3.7(c),"	It is submitted that Division 4 should only apply to arrangements between retailers and residential customers and retailers and small customers (i.e. residential and small business customers). The purpose of this proposed change is to make this clear. The AER's proposed definition of deferred debt arrangement is not limited by reference to the size of the customer. Under the current proposed rule, retailers could be entitled to a 6-month deferral of charges applicable to industrial and large commercial customers. As industrial and large commercial customers are likely to have greater financial resources than the small customer base it is not considered appropriate to move the risk of receipt of payments from these customers from retailers to distribution network service providers. If the current rule were implemented in the form proposed by the AER, then a retailer could, without cost to the retailer, defer collection of network charges from industrial and large commercial customers and move this cost to distribution network service providers.
3	**Interest on deferred revenue**	Insert the following as clause 6B.A3.9 "**6B.A3.9 Interest**	The purpose of this clause is to provide for interest to be payable in respect of the extended period of time (i.e. 5 months and 2 weeks) given to retailers to pay the deferred network charges in an invoice. That is, in respect of the period

Item	Issue	Suggested Drafting	Rationale
		In respect of any *network charges* to which clause 6B.A3.8 applies the *retailer* must pay the *Distribution Network Service Provider*: (a) interest calculated at the *allowed rate of return* for the *Distribution Network Service Provider* on those *network charges* in respect of the period commencing *10 business days* from the *date of issue* specified on the *statement of charges* setting out those *network charges* and ending upon the earlier of: (1) the *day* occurring 6 months from the *date of issue* specified on the *statement of charges*; and (2) the date of payment of the *network charges*; and (b) in respect of any *network charges* not paid by the day occurring 6 months from the *date of issue* specified on the *statement of charges*, interest calculated in accordance with clause 6B.A3.4."	commencing 10 business days after issue of an invoice and ending 6 months after issue of the invoice (**Extension Period**). If the invoice remains outstanding after 6 months, then interest would be payable as per clause 6B.A3.4 (the default interest clause). The payment of interest is appropriate as it will ensure distribution network service providers are compensated for the funding cost they will incur. The best reflection of this funding cost is the allowed rate of return as determined by the AER. The incorporation of a mechanism for the payment of interest will ensure there is an appropriate cost to retailers in using the deferral mechanism. This will ensure the mechanism is only used by those retailers who have a genuine need for it and will also encourage retailers to pay the deferred network charges as soon as they are able. For example, it is more likely to ensure if retailers do receive funds from a customer, they pay the relevant amount rather than hold it for the full 6 month period.
4(a)	**Drafting Clarity – Disputes**	Include the following new clause: "**6B.A3.11 Disputes** This clause 6B.A3.11 applies in respect of any *statement of charges* to which clause 6B.A3.8 applies: (a) a *retailer* must notify the *Distribution Network Service Provider* of a dispute relating to a *network charge* to which clause 6B.A3.8 applies within 10 *business days* of	The proposed rule does not deal with clause 6B.A3.3 which deals with disputed invoices. Clause 6B.A3.3 contemplates there is only one date for payment for each invoice but there will now be two such dates. Clause 6B.A3.3(c) incentivises a retailer to promptly raise disputes by giving the retailer a right to withhold certain portion of disputed payments raised within 10 business days of issue of an invoice. This incentive will no longer apply in respect of the deferred charges. However, it is important to a distribution

Item	Issue	Suggested Drafting	Rationale
		the *date of issue* specified on the *statement of charges* containing that *network charge* unless it was not practicable for the *retailer* to identify the disputed amount within that timeframe; (b) if a *retailer* fails to give notice of a dispute within the 10 *business day* period referred to in subclause (a) it must give notice as soon as reasonably practicable after it identifies the disputed amount; (c) references in clause 6B.A3.3(c) to (f) to amounts due under a *statement of charges* exclude any *network charge* to which clause 6B.A3.8 applies and references to the *due date for payment* in that clause is to the *due date for payment* as defined in clause 6B.A1.2; (d) the *retailer* must pay any amount in a *statement of charges* relating to *network charges* to which clause 6B.A3.8 applies by the *due date for payment* under clause 6B.A3.8 unless a *DRP* determines otherwise; (e) if the *retailer* pays an amount under subclause (d) and dispute resolution under Chapter 8 determines such amount was not due to the *Distribution Network Service Provider* then unless ordered otherwise by a *DRP* the *Distribution Network Service Provider* must repay that amount to the	network service provider to be promptly informed these charges are disputed so that it can address the issue. It would be problematic not to find out for 6 months a charge is disputed particularly as the impact of an issue which is causing the dispute (for example if it were a metering error) may be considerably magnified over a 6-month period. To address the above concerns the following regime is proposed for the deferred charges: (a) a retailer must notify the distribution network service provider of any disputed charges within 10 business days (or if this is not practicable must do so as soon as reasonably practicable) – subclauses (a) and (b); (b) clause 6BA3.3(c) to (f) (the existing dispute procedure) will apply only to those charges due within 10 business days – subclause (c); (c) in respect of the deferred charges, these must be paid at the end of the 6-month period whether disputed or not unless a Chapter 8 dispute resolution panel orders otherwise. This will encourage retailers to promptly raise disputes and ensure they are referred to Chapter 8 dispute resolution – subclause (d); (d) subclauses (e) and (f) deal with interest on the deferred charges and provide the distribution network service provider will pay interest on any amount invoiced in error and the retailer must pay interest on any amount withheld which was in fact correctly invoiced. Note the retailer may only

Item	Issue	Suggested Drafting	Rationale
		retailer within 3 *business days* of the resolution or determination of the dispute, together with interest on the amount at the *default rate* for each *day* from the date the *retailer* made the overpayment to the *Distribution Network Service Provider* to the actual date of repayment of the amount of the excess by the *Distribution Network Service Provider*; (f) in respect of any amount withheld by the *retailer* which is determined to have been correctly invoiced by the *Distribution Network Service Provider*, interest will accrue in accordance with clause 6B.A3.9."	withhold an amount past the 6-month period if permitted by a *DRP*.
4(b)	**Drafting Clarity – Credit Support**	Delete clause 6B.B1.1A Replace it with the following: "**Application of Part A, Division 4** (a) For the purposes of clause 6B.B2.1 a *retailer* will not be regarded as having failed to pay the amount due under a *statement of charges* by the *due date for payment* if the *network charges* to which clause 6B.A3.8 applies are paid by the *due date for payment* under clause 6B.A3.8. However a *retailer* will be regarded as having failed to pay the charges in a *statement of charges* if either: (1) those amounts due within 10 *business days* from the *date of issue* specified on the *statement of charges* are not paid by that date; or	Clause 6B.B1.1A provides that the credit support rules (that is the whole of Part B) do not apply to the deferred network charges. In our view the meaning of this provision is unclear, and the clause leads to results which are clearly wrong. For example, since Part B is entirely excluded in respect of the deferred charges it appears that a distribution network service provider cannot: (a) call upon credit support if a deferred network charge is not paid within 6 months of the issue of an invoice; (b) take into account the fact an invoice was not paid within the 6-month period in determining whether the test for provision of credit support in clause 6B.B2.1 is satisfied; or (c) take into account deferred network charges in determining the amount of credit support which can be

Item	Issue	Suggested Drafting	Rationale
		(2) those amounts due within 6 months from the *date of issue* specified on the *statement of charges* are not paid by that date.	requested. For example, suppose a retailer's invoice was for $1 million of which $200,000 were deferred network charges and suppose for each of August, September and October the retailer failed to pay the undeferred component ($800,000) within 10 business days. The drafting of clause 6B.B1.1A which says the Division 4 charges are not subject to the credit support rules suggests the distribution network service provider may only request credit support for $800,000. This seems incorrect – as this retailer is not paying any of its charges on time there seems no reason the distribution network service provider should not be able to request the level of credit support which would normally be able to be called for, being $1 million. By way of contrast in the same example if Part A, Division 4 were never introduced and this retailer each month paid $999,999 the distribution network service provider could request credit support of $1 million. Now with clause 6B.B1.1A despite the retailer paying $0 by the due date the distribution network service provider may only request $800,000 in credit support. In our view clause 6B.B1.1A should be deleted and replaced by a clause which provides what 6B.B1.1A might have been intended to say, which is that in applying the credit support rules and in determining whether an invoice has been paid late you take into account that part of the invoice does not have to be paid for 6 months.
5(a)	**Drafting Clarity – Term of arrangement**	Amend clause 6B.A3.8(2) to read:	As we understand the intent of the scheme it is to apply to invoices issued in the period 1 July 2020 to 31 December 2020.

Item	Issue	Suggested Drafting	Rationale
		"a *Distribution Network Service Provider* during the period 1 July 2020 to 31 December 2020 (or such further period as determined by the *AER*) issues a *statement of charges* to a *retailer* which includes *network charges* payable under clause 6B.A2.1 in respect of the *shared customer*"	However, we consider that the current drafting actually refers to network charges payable in respect of the period 1 July 2020 to 31 December 2020 – that is the drafting directs attention to when the charge accrues and not when it is invoiced. This introduces a considerable measure of complexity into the new rule, as depending upon when meter readings occur there may be some delay between charges accruing and when they are invoiced. The scheme will be much simpler to administer if it applies by reference to invoices issued during a set time period. The benefit to retailers (and by extension customers) should be the same.
5(b)	**Drafting Clarity – Scope of definition of Network Charges**	Insert the following as clause 6B.A3.8(b) (and change existing (b) to (c). "Subclause (a) applies only to *network charges* other than charges in respect of *alternative control services* and *negotiated distribution services*."	It is submitted the proposed regime should only apply to charges for Network Use of System charges – i.e. Distribution Use of System charges, and Transmission Use of System charges. Alternative control services and negotiated distribution services are generally those requested by a retailer/customer in response to specific events. If a service is requested, then it should be paid for as per normal procedures rather than payment being deferred.
6	**Measures to support implementation assessment**	Include the following new clauses: "**6B.A3.12 AER Reporting** Within 3 months of the expiry of the period referred to in clause 6B.A3.8(a) (as extended if applicable under clause 6B.A3.8(c)) the AER must *publish* a report setting out:	The purpose of these two provisions is to provide a mechanism to assess the effectiveness of the operation of Division 4 at the end of the deferral period. Division 4 is effecting a fundamental change in the relationship between distributors and retailers. We consider it important to assess whether the Division achieved its objectives. It is also, in our opinion, important to report on whether retailers acted

Item	Issue	Suggested Drafting	Rationale
		(a) its best estimate (after seeking all relevant information from *retailers*) of the total cashflow benefit provided to *retailers* by the operation of this Division 4; (b) any practical difficulties which arose in the implementation of this Division 4 and whether the Division operated as intended; (c) the extent to which the enactment of this Division 4 created a positive benefit for *retail customers* by relieving financial stress and mitigating solvency issues; (d) whether *retailers* complied with the requirements of the *AER*'s 27 March 2020 and 9 April 2020 "Statement of Expectations of energy businesses: Protecting consumers and the market during COVID-19" and any instances of non-compliance; and (e) whether this Division 4 achieved the objectives for which the Division 4 was enacted"	consistently with the intent of the Division, so as to encourage retailers to act in a way which gives effect to that intent.
7	**Review and extension of period of deferral**	Replace clause 6B.A3.8(b) and 6B.A3.8(c) with the following (note these become (c) and (d) because of new sub-clause (b) proposed above): "(c) The *AER* may determine a further period for the purposes of subclause (a)(2) provided: (1) the *AER* has published a notice stating it is considering extending the period and the reasons for which the *AER* is considering so extending the period;	The current clause 6B.A3.8(b) is very brief considering the importance of the issue it deals with – that is extension of a scheme that fundamentally alters the relationship of retailers and distributors. The purpose of the proposed changes is to introduce a more transparent process which provides market participants an opportunity to make submissions as to whether the scheme should be extended, sets out the criteria against which this decision should be made, requires the AER to provide reasons for its decision and sets an upper limit on the period of extension.

Item	Issue	Suggested Drafting	Rationale
		(2) the *AER* allows *retailers, Distribution Network Service Providers*, *retail customers* and other persons the *AER* considers appropriate 30 days to make submissions as to whether the period should be so extended; (3) having regard to the submissions the *AER*, on a reasonable basis, considers that if the period is not so extended there is a material threat to the solvency of *retailers* representing not less than 5% of the retail market of the *participating jurisdictions* to which this Chapter 6B applies; (4) having regard to the submissions the *AER* considers that extension of the period will be the most effective means to preserve the safety, security and reliability of the national electricity system taking into account the impact of the extension on *Distribution Network Service Providers*, the financial circumstances of *retailers*, the income and concession support options available to *customers* and any other relevant factors; (5) the *AER publishes* its decision (including the reasons justifying that decision) not less than 30 days before the expiry of the period in subclause (a)(2). "(d) The *AER* may only exercise its power under subclause (c) once and the maximum further period determined by the *AER* may not exceed 6 months."	It is submitted the AER should only be entitled to further extend the period of the scheme if it has undertaken appropriate consultation with retailers and distribution network service providers. New paragraphs (b)(1) and (2) provide for the AER to publish a notice seeking submissions on whether the relevant period should be extended and allowing 30 days for such submissions. The criteria proposed in existing clause 6B.A3.8(b) of "reasonably necessary in all the circumstances" is vague. We consider the clause should be more transparent as to the factors the AER must consider. Firstly, these should include that a material number of retailers are facing a real threat of solvency issues (see new paragraph 3). In addition, relevant criteria include the extent to which distribution network service providers have the financial capacity to further extend the period, the circumstances of retailers generally and the other income and concession support options available to customers – see new paragraph 4. The AER should publish its reasons for its decision to extend the relevant period. It is not appropriate for the AER to simply publish a decision it will extend the period. Consistent with all other decision-making processes under the rules, reasoning should be transparent, justified and published – see new paragraph 5. If the period is to be extended, then the decision should be made at least 30 days before expiry of the current period so as to give distribution network service providers adequate time to put in place the financial accommodation to further extend the period. See new paragraph 5.

Item	Issue	Suggested Drafting	Rationale
			It should be clear that the relevant period may only be extended once. We consider this is probably the assumption behind the existing drafting but it is not made clear. Further we submit there should be a limit on the further period for which the AER may extend the operation of the division. This should be 6 months – the length of the initial period.

Appendix 3 I NER mark-ups

Please note that this is a marked-up version of the AER's proposed NER Chapter 6B Part A Division 4 – **the mark ups reflect amendments to the AER's proposed Rules drafting contained in their rule change request**[1].

Please note that it does not action ENA's proposed alternative drafting to the credit support section of NER Chapter 6B Part B [Item 4(b) in Appendix 2].

Division 4

6B.A3.6 Application of this Division

(a) This Division applies to a *Covid-19 customer arrangement* entered into between a *retailer* and a *shared customer*.

(b) This Division prevails over any inconsistent provisions in this Part.

6B.A3.7 Interpretation

(a) Subject to clause 6B.A3.7(c), ~~i~~In this Division, a **Covid-19 customer arrangement** means:

(1) Any payment plan or instalment arrangement, within the meaning of the *National Energy Retail Law* or the *National Energy Retail Rules*;

(2) Any arrangements for a *shared customer* of a *retailer* as a hardship customer of the *retailer*, within the meaning of the *National Energy Retail Law*; and

(3) Any *deferred debt arrangement*;

entered into between a *shared customer* and a *retailer* in the period commencing 1 March 2020 and ending 31 December 2020.

(b) In this Division, a **deferred debt arrangement** means any arrangement by which the payment of a debt owed or expected to be owed by a *shared customer* to a *retailer* for the supply of energy is deferred.

(c) A *Covid-19 customer arrangement* does not include any arrangement or plan between a *retailer* and a *shared customer* which *shared customer*:

(1) is not a residential customer; and

(2) has an annual electricity consumption of more than 40 MWh per annum.

6B.A3.8 Extended due date

(a) If:

(1) a *retailer* has entered into a *Covid-19 customer arrangement* with a *shared customer*; and

(2) a *Distribution Network Service Provider* ~~has provided a *statement of charges* to a *retailer* and the *statement of charges* includes *network charges* payable under clause 6B.A2.1 in respect of the *shared customer* for the period of 1 July 2020 to 31 December 2020~~ during the period 1 July 2020 to 31 December 2020 (or such further

[1] AER, Rule Change Proposal: Extension of time for retailers to pay network charges for eligible customers, May 2020.

period as determined by the *AER*) issues a *statement of charges* to a *retailer* which includes *network charges* payable under clause 6B.A2.1 in respect of the *shared customer*~~(or such further period as determined by the AER)~~,

then, for the purposes of this Part, the *due date for payment* for the *network charges* payable in respect of the *shared customer* is to be taken to be 6 months from the *date of issue* specified on the *statement of charges*.

(b) Subclause (a) applies only to *network charges* other than charges in respect of *alternative control services* and *negotiated distribution services*.

(c~~b~~) The AER may determine a further period for the purposes of subclause (a)(2) provided:

(1) the AER has published a notice stating it is considering extending the period and the reasons for which the AER is considering so extending the period;

(2) the *AER* allows *retailers, Distribution Network Service Providers*, *retail customers* and other persons the *AER* considers appropriate 30 days to make submissions as to whether the period should be so extended;

(3) having regard to the submissions the *AER*, on a reasonable basis, considers that if the period is not so extended there is a material threat to the solvency of *retailers* representing not less than 5% of the retail market of the *participating jurisdictions* to which this Chapter 6B applies;

(4) having regard to the submissions the *AER* considers that extension of the period will be the most effective means to preserve the safety, security and reliability of the national electricity system taking into account the impact of the extension on *Distribution Network Service Providers*, the financial circumstances of *retailers*, the income and concession support options available to *customers* and any other relevant factors;

(5) the *AER publishes* its decision (including the reasons justifying that decision) not less than 30 days before the expiry of the period in subclause (a)(2).

~~(the AER is satisfied that it is reasonably necessary in all the circumstances; and~~

~~(2) the determination is made before the expiration of the period mentioned in that subclause~~

(d~~c~~) ~~If the AER determines a further period under subclause (b), it must make available on its website a notice of that further period as soon as practicable after making the determination~~ The *AER* may only exercise its power under subclause (c) once and the maximum further period determined by the *AER* may not exceed 6 months.

6B.A3.9 Interest

In respect of any *network charges* to which clause 6B.A3.8 applies the *retailer* must pay the *Distribution Network Service Provider*:

(a) interest calculated at the *allowed rate of return* for the *Distribution Network Service Provider* on those *network charges* in respect of the period commencing *10 business days* from the *date of issue* specified on the *statement of charges* setting out those *network charges* and ending upon the earlier of:

(1) the *day* occurring 6 months from the *date of issue* specified on the *statement of charges*; and

(2) the date of payment of the *network charges*; and

(b) in respect of any *network charges* not paid by the day occurring 6 months from the *date of issue* specified on the *statement of charges*, interest calculated in accordance with clause 6B.A3.4.

6B.A3.10 Retailer Eligibility

(a) This Division 4 only applies to a *retailer* who has been approved by the *AER* as a *retailer* to whom this Division 4 should apply.

(b) A *retailer* may not be approved by the *AER* for the purposes of this Division 4 if:

(1) their securities are listed on the Australian Securities Exchange or an internationally recognised securities exchange; or

(2) they are a *related body corporate* of (or otherwise controlled by) an entity whose securities are listed on the Australian Securities Exchange or an internationally recognised securities exchange; or

(3) the *retailer* is owned or controlled by a government or government agency, including without limitation because the *retailer* has one or more shareholders who are Ministers of the Crown or the *retailer* is established under statute or is controlled by a body whose shareholders are Ministers of the Crown or which is established under statute .

(c) A *retailer* may only be approved by the *AER* for the purposes of this Division 4 if:

(1) the *retailer* undertakes to the *AER* the *retailer* (and any holding company of the *retailer* as defined in the Corporations Act 2001) will not declare or pay any dividends, otherwise reduce its share capital or equity or pay any performance bonuses to its executives until such time as all *network charges* and interest to which Division 4 applies have been paid in full to the relevant *Distribution Network Service Providers*;

(2) an independent auditor approved by the *AER* has certified that in the auditor's opinion formed after due enquiry in accordance with generally accepted auditing standards:

(i) the *retailer* is, in the next 6 months following the date of the auditor's certificate, likely to have significant liquidity problems;

(ii) those liquidity problems have arisen (or will arise) due to the impact of COVID-19 on the *retailer* or its *customers* (including compliance by the *retailer* with the *AER*'s 27 March 2020 and 9 April 2020 "Statement of Expectations of energy businesses: Protecting consumers and the market during COVID-19" and any instances of non-compliance");

(iii) those liquidity issues are not reasonably able to be addressed by the *retailer* obtaining a capital injection or loan from a *related body corporate*;

(iv) the *retailer* is not insolvent (within the meaning of the *Corporations Act 2001)* and it is more likely than not the *retailer* will not become insolvent within the next 12 months if Division 4 applies to the *retailer*.

6B.A3.11 Disputes

This clause 6B.A3.11 applies in respect of any *statement of charges* to which clause 6B.A3.8 applies:

(a) a *retailer* must notify the *Distribution Network Service Provider* of a dispute relating to a *network charge* to which clause 6B.A3.8 applies within 10 *business days* of the *date of issue* specified on the *statement of charges* containing that *network charge* unless it was not practicable for the *retailer* to identify the disputed amount within that timeframe;

(b) if a *retailer* fails to give notice of a dispute within the 10 *business day* period referred to in subclause (a) it must give notice as soon as reasonably practicable after it identifies the disputed amount;

(c) references in clause 6B.A3.3(c) to (f) to amounts due under a *statement of charges* exclude any *network charge* to which clause 6B.A3.8 applies and references to the *due date for payment* in that clause is to the *due date for payment* as defined in clause 6B.A1.2;

(d) the *retailer* must pay any amount in a *statement of charges* relating to *network charges* to which clause 6B.A3.8 applies by the *due date for payment* under clause 6B.A3.8 unless a *DRP* determines otherwise;

(e) if the *retailer* pays an amount under subclause (d) and dispute resolution under Chapter 8 determines such amount was not due to the *Distribution Network Service Provider* then unless ordered otherwise by a *DRP* the *Distribution Network Service Provider* must repay that amount to the *retailer* within 3 *business days* of the resolution or determination of the dispute, together with interest on the amount at the *default rate* for each *day* from the date the *retailer* made the overpayment to the *Distribution Network Service Provider* to the actual date of repayment of the amount of the excess by the *Distribution Network Service Provider*;

(f) in respect of any amount withheld by the *retailer* which is determined to have been correctly invoiced by the *Distribution Network Service Provider*, interest will accrue in accordance with clause 6B.A3.9.

6B.A3.12 AER Reporting

Within 3 months of the expiry of the period referred to in clause 6B.A3.8(a) (as extended if applicable under clause 6B.A3.8(c)) the AER must *publish* a report setting out:

(a) its best estimate (after seeking all relevant information from *retailers*) of the total cashflow benefit provided to *retailers* by the operation of this Division 4;

(b) any practical difficulties which arose in the implementation of this Division 4 and whether the Division operated as intended;

(c) the extent to which the enactment of this Division 4 created a positive benefit for *retail customers* by relieving financial stress and mitigating solvency issues;

(d) whether *retailers* complied with the requirements of the *AER*'s 27 March 2020 and 9 April 2020 "Statement of Expectations of energy businesses: Protecting consumers and the market during COVID-19" and any instances of non-compliance; and

(e) whether this Division 4 achieved the objectives for which the Division 4 was enacted."