



Australian Energy Market Commission

DRAFT RULE DETERMINATION

National Electricity Amendment (Customer access to information about their energy consumption) Rule 2014

National Energy Retail Amendment (Customer access to information about their energy consumption) Rule 2014

Rule Proponent
COAG Energy Council

14 August 2014

**RULE
CHANGE**

Inquiries

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

E: aemc@aemc.gov.au

T: (02) 8296 7800

F: (02) 8296 7899

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About the AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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Executive summary

The Australian Energy Market Commission's decision in this draft rule determination will make it easier for customers to access their electricity consumption data so that it is in an understandable format, received in a timely manner and charged at a reasonable price or free of charge. By making this information more accessible, customers will be able to make better and more informed choices about energy products and services. This will empower consumers to make decisions that best suit them and help them save on their energy costs.

This draft rule determination responds to a rule change request proposed by the COAG Energy Council. The rule change request largely stems from the AEMC's recommendations in its Power of choice review on giving consumers more options in how they use electricity.

The Commission has decided to make draft rules that will:

- allow customers to request access to their electricity consumption data from a Distribution Network Service Provider (DNSP) in addition to a retailer;
- allow parties authorised by customers to also request access to their electricity consumption data from retailers and DNSPs; and
- require retailers and DNSPs to comply with minimum requirements relating to the format, time frames and costs when a customer, or a party authorised by that customer, requests their electricity consumption data.

The Commission invites submissions from stakeholders in relation to the draft rule determination by 25 September 2014.

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1 COAG Energy Council's rule change request

1.1 The rule change request

On 23 October 2013, the COAG Energy Council made a request to the Australian Energy Market Commission (Commission) to make a rule regarding customers' access to information about their energy consumption.

1.2 Background

1.2.1 AEMC's Power of choice review

In December 2012, the Council of Australian Governments and the COAG Energy Council agreed to implement a comprehensive package of energy market reforms to support investment and market outcomes in the long term interests of consumers.¹ One area of reform sought to address the impediments to, and promote the commercial adoption of, demand side participation (DSP) in the National Electricity Market (NEM).² The COAG Energy Council developed a work program to implement the reforms, which covered three priority areas:

1. *Improving pricing and incentives:* This includes providing consumers with clear signals about the cost of their energy consumption in order to efficiently manage their demand. Businesses also need appropriate incentives to implement and facilitate DSP options.
2. *Informing choice:* This includes providing consumers and demand side providers with information so that they can identify and implement efficient demand options.
3. *Enabling response:* A range of technologies, skills and supporting frameworks are required to support pricing, information and demand management options, and to enable timely responses to market signals.

As part of these reforms, the Council of Australian Governments and the COAG Energy Council agreed to implement most of the recommendations made by the AEMC in its Power of choice review.³

The Power of choice review, published in November 2012, identified the opportunities for consumers to make more informed choices about the way they use electricity.⁴

1 Council of Australian Governments, COAG meeting 7 December 2012, communique, COAG, 2012.

2 COAG Energy Council 2014, Canberra, <http://www.scer.gov.au/workstreams/energy-market-reform/> (accessed 24 March 2014).

3 In March 2013, the COAG Energy Council published its response to the recommendation in the AEMC's Power of choice review. For further information please go to: <http://www.scer.gov.au/workstreams/energy-market-reform/demand-side-participation/>.

These opportunities relate to improved information, education, technology and flexible pricing options. The review also addressed the market conditions and incentives required for network operators, retailers and other parties to maximise the potential of efficient DSP and respond to consumer choice.

The review made a number of recommendations for reform with the overall objective that the community's demand for electricity services be met by the lowest cost combination of demand and supply side options. This objective is best met when consumers use electricity at times when the value to them is greater than the cost of supplying that electricity.

The COAG Energy Council decided to submit this rule change request to the AEMC to implement one of the recommendations in the Power of choice review. In particular, the review recommended that customers should obtain better access to their consumption data and information about their electricity use and be able to share their data with approved service providers.⁵ If implemented, this recommendation was expected to:⁶

- improve customers' awareness of their electricity consumption and use patterns;
- enable more informed choices about DSP services that better suit their circumstances; and
- promote efficient retail electricity markets through innovative products and services.

The rule change request forms part of a broader package of reforms recommended in the Power of Choice review as illustrated in Table 1.1.

Table 1.1 Broader package of reforms following the Power of choice review

Reform mechanism	Name of reform
AEMC rule changes	Distribution network pricing arrangements ⁷
	Expanding competition in metering and related services ⁸
	AEMO obtaining better demand side participation information ⁹

⁴ Australian Energy Market Commission, *Power of choice review*, final report, AEMC, 30 November 2012, Sydney.

⁵ AEMC 2012, op. cit., piii.

⁶ AEMC 2012, op. cit., p51.

⁷ <http://www.aemc.gov.au/Rule-Changes/Distribution-Network-Pricing-Arrangements>

⁸ <http://www.aemc.gov.au/Rule-Changes/Expanding-competition-in-metering-and-related-serv>

Reform mechanism	Name of reform
	Reform of demand management embedded generation incentive scheme ¹⁰
AEMC reviews	Electricity customer switching (completed in April 2014) ¹¹
	Framework for open access and common communication standards for smart meters (completed in April 2014) ¹²
Other recommended rule changes	Demand response mechanism – option for demand side resources to participate in the wholesale electricity market. ¹³ This is with the COAG Energy Council.
	Multiple trading relationships and embedded networks. This is with AEMO.

1.2.2 Related reforms

COAG Energy Council's work on smart meters and privacy

The COAG Energy Council investigated whether there were any implications for customers' privacy resulting from the roll-out of smart meters. COAG Energy Council built upon an assessment by the Victorian government on smart meters and privacy relating specifically to Victoria carried out by a consulting firm: Lockstep.¹⁴ The COAG Energy Council commissioned Seed Advisory to extend this assessment to cover all jurisdictions in the NEM, particularly in light of recent changes to privacy legislation.

The Seed Advisory report to the COAG Energy Council found that the recommendations in the Lockstep report, which were made for Victoria, still remained relevant and applicable in relation to broader federal, state and territory legislative arrangements relating to privacy.¹⁵ In general, Seed Advisory upheld Lockstep's

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<http://www.scer.gov.au/workstreams/energy-market-reform/demand-side-participation/improved-demand-forecasting/>

10

<http://www.scer.gov.au/workstreams/energy-market-reform/demand-side-participation/dmeggis/>

11

<http://www.aemc.gov.au/Markets-Reviews-Advice/Review-of-Electricity-Customer-Switching>

12

<http://www.aemc.gov.au/Markets-Reviews-Advice/Framework-for-open-access-and-communication-standards>

13

<http://www.scer.gov.au/workstreams/energy-market-reform/demand-side-participation/wholesale-market-demand-response-mechanism-in-the-national-electricity-market/>

14

The Lockstep, Privacy Impact Assessment Report, August 2011.

15

Seed Advisory, Privacy for the National Smart Metering Program - Report for the Energy Market Reform Working Group, 7 August 2013, p5.

recommendations that privacy safeguards in relation to metering information were strong while suggesting some areas for improving the regulatory regime.

Importantly, it strongly recommended implementing recommendations relating to customer awareness and education as it would provide further customer certainty and address customer concerns arising from a lack of information.¹⁶ Seed Advisory also recommended applying a limited industry-specific privacy regime to energy market participants, adopting an 'opt-out' regime for the use of interval metering data in direct marketing by DNSPs and retailers, and broadening the application of the Australian Privacy Principles.¹⁷

The findings of this report have served as an input into some of the proposals within this rule change request.¹⁸

Australian government work on establishing an energy information hub

The Australian government commissioned a scoping study on the potential need for an energy information hub to improve access to energy data.¹⁹ Part of this work is related to how third parties can access customer information and how that data can be efficiently transferred to them and other parties. The Australian government is examining options to progress this work.

1.3 Rationale for rule change request

Under clause 7.7(a) of the National Electricity Rules (NER), customers are already entitled to access their metering and settlements ready data, which we collectively refer to as 'electricity consumption data'²⁰.

However, the AEMC's power of choice review found that in practice it is difficult for customers to access their data from market participants in an understandable format and in a timely manner.²¹ Also, it is difficult for customers to enable other parties to have access to this data.²²

In addition, as noted in section 1.2.2, Seed Advisory's report on smart meters and privacy, commissioned by the COAG Energy Council, recommended that customer awareness and education activities be undertaken to address concerns about how energy consumption data can be used.

¹⁶ Seed Advisory, op. cit., p8.

¹⁷ Seed Advisory, op. cit., p7.

¹⁸ Please see Chapter 6 of this draft rule determination.

¹⁹ Please see:

<http://www.innovation.gov.au/Energy/EnergyMarkets/ElectricityMarketDevelopment/Pages/ConsumerEnergyDataAccess.aspx> (accessed 6 May 2014).

²⁰ Please refer to Appendix A of the consultation paper for a detailed description of electricity consumption data and meters available at www.aemc.gov.au.

²¹ AEMC, op. cit., p54.

²² AEMC, op. cit., p54.

1.4 Solution proposed in the rule change request

The COAG Energy Council proposes to resolve the issues discussed above by a Rule that seeks to:

- clarify that customers or parties authorised by customers are entitled to have access to their electricity consumption data from either their retailer, DNSP or Metering Data Provider (MDP);
- require the Australian Energy Market Operator (AEMO) to develop 'data provision procedures' that must be complied with by registered participants.²³ These procedures will specify the format and time frame for the delivery of electricity consumption data to customers;
- require retailers and DNSPs to publish information sheets on their websites about electricity consumption data - who has access to it, how it is used, when it may be disclosed and how it is protected; and
- require the Australian Energy Regulator (AER) to develop 'metering data common terminology guidelines' for common terms relating to how electricity consumption data is used and who has access to it.

The rule change request proposes changes to both the NER and the National Energy Retail Rules (NERR).²⁴

1.5 Commencement of the rule making process

On 8 May 2014, the Commission published a notice under section 95 of the National Electricity Law (NEL) and section 251 of the National Energy Retail Law (NERL) advising of its intention to commence the Rule making process and the first round of consultation in respect of the rule change request. A consultation paper prepared by AEMC staff identifying specific issues or questions for consultation was also published with the rule change request. Submissions closed on 5 June 2014. The Commission received 22 submissions on the rule change request as part of the first round of consultation. They are available on the AEMC website.²⁵

1.6 Consultation on the draft rule determination

The Commission invites submissions on this draft Rule determination, including the draft Rule, by 25 September 2014.

²³ Registered participants are defined in Chapter 2 of the NER and include generators, network service providers and retailers.

²⁴ The NERR currently applies in the Australian Capital Territory, New South Wales, South Australia and Tasmania.

²⁵ www.aemc.gov.au

Any person or body may request that the Commission hold a hearing in relation to the draft Rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than 21 August 2014.

Submissions and requests for a hearing should quote project number "ERC0171" and may be lodged online at www.aemc.gov.au or by mail to:

Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

2 Draft rule determination

2.1 Rule making test

2.1.1 Rule making test under the NEL

The Commission may only make a Rule if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the National Electricity Objective (NEO).

The NEO is as follows:

“The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity;
and
- (b) the reliability, safety and security of the national electricity system.”

2.1.2 Rule making test under the NERL

Any changes to the NERR must satisfy two tests under the NERL.

The AEMC must assess whether the proposed rule will, or is likely to, contribute to the achievement of the National Energy Retail Objective (NERO). The NERO is as follows:

“The objective of this Law is to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.”

Where relevant, the AEMC must also satisfy itself that the rule is "compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers" (the "consumer protections test").²⁶ Where the consideration of the consumer protections test is relevant in the making of a rule, the AEMC must be satisfied that both the NERO test and the consumer protections test have been met.²⁷ If the Commission is not satisfied that both tests have been met, the rule cannot be made.

²⁶ See section 236(2)(b) of the NERL.

²⁷ That is, the legal tests outlined in section 236(1) and 236(2)(b) of the NERL.

2.2 Assessment criteria

To assess whether the rule change promotes efficiency in the investment, operation and use of electricity services for the long term interest of consumers, the AEMC has applied the following assessment criteria:

- *Enhancing consumer participation and decision-making* - whether the rule change would enhance the quality of information available to customers so that they can make more efficient energy consumption decisions?
- *Competition* - whether the rule change would further promote competition in the retail markets for energy and DSP services?
- *Transparency of regulatory frameworks* - whether the rule change increases transparency for customers and market participants with respect to the transactions they make?
- *Regulatory and administrative burden* - does the rule change result in a disproportionate regulatory or administrative burden on market participants?

The assessment criteria above will be applied to the proposed changes to the NER and NERR. This is because the requirement to promote efficiency in the investment, operation and use of electricity/energy services for the long term interests of consumers is a common requirement in both the NEO and the NERO.

As part of our assessment under the NERL, we consider that there are consumer protections relevant to this rule change request. The relevant consumer protections are those that relate to the provision of information to consumers.²⁸ Relevant consumer protections can include the general prohibition against misleading and deceptive conduct in the Australian Consumer Law or contractual requirements to make historical billing and consumption information available to consumers as set out in the NERL and NERR. We have assessed whether the proposed rule is compatible with the development and application of this class of consumer protections for small customers.

2.3 Draft rule determination

The Commission has determined to make draft rules²⁹ that are more preferable rules because these rules will, or are likely to, better contribute to the achievement of the NEO and NERO.³⁰ The Commission's decision is explained further below.

²⁸ For a detailed account of the relevant consumer protections, please refer to Appendix B of the consultation paper available at www.aemc.gov.au.

²⁹ Draft National Electricity Amendment (Customer access to information about their energy consumption) Rule 2014 (NER Rule) and Draft National Energy Retail Amendment (Customer access to information about their energy consumption) Rule 2014 (NERR Rule).

³⁰ Appendix A sets out further detail regarding the legal requirements for the making of this draft rule determination.

There are two draft rules. The NER draft rule makes amendments to chapter 7 of the NER. The NERR draft rule makes a number of amendments to the NERR, including the model terms and conditions for standard retail contracts and deemed standard connection contracts.

The key features of the draft rules are that it:

- enables customers to access their electricity consumption data from DNSPs and retailers;
- enables any person authorised by a customer to access that customer's electricity consumption data from DNSPs and retailers; and
- requires retailers and DNSPs to comply with minimum requirements when responding to requests for electricity consumption data from customers or parties authorised by customers. These minimum requirements relate to the format of data, the time frame for a retailer or DNSP to respond to a data request, the duration of time over which the data set must cover and under what circumstances a data request is free of charge or subject to a reasonable fee. AEMO is to set these minimum requirements in data provision procedures.

The key differences between the proposed rules and the more preferable draft rules and the reasons why the draft rules better meet the NEO and NERO are, as follows:

- The draft rules do not require MDPs to provide electricity consumption data to customers upon request. The Commission decided not to make a draft rule in this respect because MDPs do not have direct relationships with customers. A framework where customers can access their data directly from a retailer or DNSP remains more appropriate.
- The minimum requirements in the draft NER rule are less prescriptive than in the proposed NER rule. The Commission's focus has been to set the minimum requirements in the NER while matters of detail, such as the specific requirements for data formats, are matters for AEMO to set in its procedures. We consider that this is a more appropriate allocation of obligations between the NER and AEMO procedures.
- The draft NERR rule will not require retailers and DNSPs to place information on their websites about how metering data is used and will not require AER to develop 'metering data common terminology guidelines'. While we support enhancing customer engagement and education, there is insufficient evidence that this specific proposal will materially assist consumer education or engagement nor is there a material risk requiring regulatory intervention in this manner. We also consider that existing privacy legislation and privacy policies remain appropriate and can address these concerns.

The Commission is satisfied that the NERR draft rule is compatible with the development and application of consumer protections for small customers in relation to the class of consumer protections relating to the provision of information.

2.4 Civil penalties

The provisions of the NERR that are classified as civil penalty provisions are listed in the National Energy Retail (South Australia) Regulations. The Commission may recommend to amend or remove these provisions, but must notify the COAG Energy Council of the policy rationale for taking this course of action.

The draft rule amends certain provisions that are currently classified as civil penalty provisions. These are rules 28 and 86 of the NERR. The Commission recommends that these provisions remain civil penalty provisions because the amendments to these provisions change the time frame for the provision of information only but these amendments do not affect the key obligation to make such information available.

While the Commission cannot create new civil penalty provisions, it may recommend to the COAG Energy Council that new or existing provisions of the NERR be classified as civil penalty provisions. The Commission proposes to recommend to the COAG Energy Council that new rule 56A of the NERR be classified as a civil penalty provision. Rule 56A of the NERR creates a new obligation on a retailer to provide energy consumption information to its customers, and is similar in its nature to the obligation currently existing in rule 86 of the NERR for DNSPs, which itself is currently classified as a civil penalty provision.

The Commission considers that these new and amended provisions to the NERR should be classified as civil penalty provisions because it reflects their importance to the operation of the retail market and will encourage compliance by relevant parties with respect to these provisions.

2.5 Commencement date of the rules

The NERR rule will need to specify a date by which retailers and DNSPs must vary their forms of standard retail contracts and standard connection contracts respectively.³¹ That is, the NERR draft rule must specify a date when Schedule 2 of the NERR draft rule commences. We would appreciate receiving submissions from stakeholders as to the time that would be required to give effect to this change.

2.6 Strategic priority

This rule change request relates to the first of the AEMC's current strategic priorities, the consumer priority, which aims to empower consumers to participate confidently in all parts of the energy supply chain where they desire to do so. This rule change request will make it easier for consumers and their agents to access information about their electricity consumption in an understandable, cost-effective and timely manner from retailers and DNSPs. This rule change request will enable consumers to make more informed and efficient decisions to confidently participate in the electricity market.

³¹ Section 237(4) of the NERL.

3 Customer access to electricity consumption data from DNSPs, MDPs and AEMO

3.1 Access to data from DNSPs

3.1.1 Rule change proposal

At present, the NER entitles customers to access their electricity consumption data by requesting that data from retailers only.³² In this rule change request, the COAG Energy Council proposed that customers can request their electricity consumption data from DNSPs in addition to their retailer.³³

3.1.2 Stakeholder views

In submissions on the consultation paper, stakeholders generally supported a change to the NER to allow customers to access their electricity consumption data from DNSPs.³⁴ For example, NSW DNSPs stated that this would better achieve the policy intent in relation to access to data as expressed in the AEMC's power of choice review and align the obligations on DNSPs in Chapter 7 of the NER with obligations in the NERR.³⁵

However, some DNSPs expressed their concerns about having an obligation to provide electricity consumption data to customers. SP AusNet was concerned about how DNSPs would verify the identity of their customers and suggested that retailers should bear the primary responsibility of providing data to customers with the DNSPs having a secondary role.³⁶ Ergon Energy noted the potential costs involved in changing their processes and systems to align with the proposed requirements.³⁷

Some stakeholders stated that if a customer requested data from a DNSP and retailer and subsequently noticed discrepancies between the data sets provided by these market participants, then this could potentially require market participants to engage more frequently with the customer and lead to increased costs to address the queries of

³² See rule 7.7(a)(7) of the NER. Note that a customer's retailer is its 'financially responsible market participant' for the purposes of the NER.

³³ COAG Energy Council, *op. cit.*, p8.

³⁴ AGL, submission on consultation paper, p1; Alinta Energy, submission on consultation paper, p2; ENA, submission on consultation paper, p2; Energy Tailors, submission on consultation paper, p1; NSW DNSPs, submission on consultation paper, p2; PIAC, submission on consultation paper, p1; Vector, submission on consultation paper, p4. Although note a contrary view: Citipower & PowerCor, submission on consultation paper, p1.

³⁵ NSW DNSPs, submission on consultation paper, p2;

³⁶ SP AusNet, submission on consultation paper, p7.

³⁷ Ergon Energy, submission on consultation paper, p3.

these customers.³⁸ The Energy and Water Ombudsman in Victoria reported that in Victoria there were some queries about discrepancies between data sets provided by retailers as compared to their DNSP.³⁹

3.1.3 Analysis

If customers or authorised parties were able to request access to their electricity consumption data from DNSPs, then this would result in customers or authorised parties having an additional source to obtain their data. This would be consistent with our objective to empower customers with information to make more efficient electricity consumption decisions. This position would also be consistent with the policy settings in the jurisdictions that have adopted the National Energy Customer Framework (NECF), which provide that customers have contractual arrangements with DNSPs. It would codify current practices in Victoria where customers can access their data from DNSPs.⁴⁰ It would also ensure that the practice of providing customers with data by a DNSP is compliant with the NER as there is a concern that DNSPs may be in breach of current arrangements.⁴¹

In addition, enabling authorised parties to obtain access to electricity consumption data from DNSPs, rather than only retailers, would allow these authorised parties to get access to information in circumstances where they are in direct competition with retailers and may not want to approach a retailer or a retailer may have an incentive to frustrate data requests from these authorised parties. Therefore it is preferable for these authorised parties to have the option to source data from DNSPs so as to facilitate competition in the retail market or energy/DSP services market.

Further, allowing customers to access their electricity consumption data from DNSPs harmonises the approach in the NER with the existing arrangements in the NERR, where customers (including small customers) can already obtain certain data from retailers or DNSPs.⁴²

With respect to practical concerns noted in submissions, we understand that DNSPs are able to verify the identity and details of customers through B2B transactions providing customer details from a retailer.⁴³ Also, if a customer has any concerns about discrepancies in data sets, then we would expect that the retailer and DNSP providing this information to explain these discrepancies.

38 ERM Power, submission on consultation paper, p2; Origin Energy, submission on consultation paper, p2.

39 Energy and Water Ombudsman Victoria, submission on consultation paper, p5.

40 Clause 11, Advanced Metering Infrastructure (AMI Tariffs) Order, 19 June 2013.

41 See AER Compliance Bulletin No. 8 on Confidential requirements for energy, metering and NMI standing data. 29 June 2012.

42 See rules 28 and 86 of the NERR. Please note that rule 28 of the NERR only applies to small customers.

43 Please see AEMO's B2B Procedures available at: <http://www.aemo.com.au/Electricity/Policies-and-Procedures/B2B/BB-Procedures> (accessed 17 July 2014).

3.2 Access to data from MDPs

3.2.1 Rule change proposal

The rule change request stated that MDPs may provide electricity consumption data directly to customers.⁴⁴ However, the proposed rule did not include specific legal drafting for any NER amendments to give effect to this proposal.

3.2.2 Stakeholder views

In submissions on the consultation paper, there was general support for providing MDPs with the ability to provide electricity consumption data directly to customers.⁴⁵ However, some stakeholders noted that MDPs do not have direct customer relationships⁴⁶ and may not be able to, or have difficulties, verifying customers' identities.⁴⁷

3.2.3 Analysis

In the NEM, a MDP is appointed by the Responsible Person⁴⁸(who is either a retailer or DNSP) to provide metering data services.

Under the NER, customers do not have a direct relationship with MDPs or a right to request data directly from MDPs. The NER provides that MDPs must provide data to retailers or DNSPs⁴⁹, but does not refer to direct provision of data to customers.

In practice, some large customers may receive data from MDPs who are acting as service providers on behalf of those customers' retailers or DNSP. However, in most cases, customers would not be aware of who their MDP would be. Equally, MDPs do not have access to customers' names or other personal information to verify a customer's identity.

Customers can access their electricity consumption data from retailers and, as proposed in this draft rule determination, from DNSPs. We consider that this regulatory framework for accessing data, including the existing role for a MDP in the

⁴⁴ COAG Energy Council, op. cit., p2.

⁴⁵ AGL, submission on consultation paper, p2; Alinta Energy, submission on consultation paper, p2; Energex, submission on consultation paper, p4; ERAA, submission on consultation paper, p2; Origin, submission consultation paper, p2; PIAC, submission on consultation paper, p1.

⁴⁶ Vector, submission on consultation paper, p4.

⁴⁷ Ergon Energy, submission on consultation paper p4; SP AusNet, submission on consultation paper, p8; United Energy, submission on consultation paper, p2.

⁴⁸ The role of the Responsible Person is defined in Chapter 7 of the NER and involves engaging a Metering Provider and a Metering Data Provider. The role of the Responsible Person is the subject of a rule change request - competition in metering and related services -currently being assessed by the AEMC.

⁴⁹ Clause 7.11.2(a)(6) of the NER.

NER, remains sound. We therefore do not consider that it would be appropriate to amend the NER to give customers additional entitlements to access data directly from a MDP.

3.3 Access to data from AEMO

3.3.1 Rule change proposal

In the rule change proposal, the COAG Energy Council noted the scoping study by the Australian Government on the need to establish an energy information hub.⁵⁰ Part of this work related to how third parties can access customer information and how that data can be efficiently transferred to them and other parties. The COAG Energy Council noted that the Australian Government is examining options to progress this work.⁵¹

3.3.2 Stakeholder views

The Energy Market Reform Working Group (EMRWG) of the COAG Energy Council made a late submission proposing that the AEMC consider the option of allowing customers and authorised service providers to use B2B arrangements to obtain access to 'consumer energy use data through a common gateway', namely, AEMO's Market Settlement and Transfer Solution (MSATS) database.⁵² The EMRWG argued that existing limits to accessing AEMO's centrally held data could:

- disadvantage third party energy service providers by imposing coordination costs to access data from many retailers and DNSPs;
- lead to duplication of retailer and DNSP data systems and therefore ultimately increase costs for consumers;
- reduce access to complete historic data sets as data sets are limited by 'changing competitive retail relationships'; and
- be inconsistent with Australian Privacy Principles, by limiting customers' ability to access their data.⁵³

3.3.3 Analysis

Currently, the design of AEMO's MSATS is such that customers' names are not recorded. Given this current design, the proposal by the EMRWG that customers or third parties could request energy consumption data directly from AEMO would not

⁵⁰ COAG Energy Council, *op. cit.*, p10.

⁵¹ COAG Energy Council, *ibid.*

⁵² EMRWG of the COAG Energy Council, submission on consultation paper, p2.

⁵³ EMRWG, *op. cit.*, p2-3.

be able to be implemented unless there are significant upgrades to MSATS. Without access to customers' names, AEMO could not verify the identity of a customer requesting access to its data, or confirm that a third party requesting data has the customer's consent. AEMO would also not be able to ensure that it only provided data for the period during which that customer was the customer at the relevant address, for example if a customer only moved into that address six months ago but asked for two years of consumption data.

Any upgrade to MSATS so that it contained customer names to overcome these issues would also need to consider any resulting privacy concerns. We understand that it is currently an intentional design feature of MSATS that it does not contain personal information such as customers' names.

More broadly, it is important to recognise the relationships that customers have with market participants. Customers have direct relationships with retailers and also with their DNSP. Customers do not have direct relationships with AEMO.

EMRWG's proposal is intended as a complement to the other changes proposed in this rule change request where customers can access data from retailers and DNSPs. However, there is a risk that this proposal could lead to potentially inefficient duplication across AEMO, retailers and DNSPs and create a significant change in AEMO's role to interface directly with customers.

We note the potential benefits outlined in EMRWG's proposal, including avoiding the need for duplication of retailer and DNSP data systems. However, some of these benefits would appear to only apply if this proposal was adopted instead of allowing customers to access their energy consumption data from retailers or DNSPs. If the final rule determination is similar to this draft rule determination where customers or authorised parties are allowed to access energy consumption data from retailers or DNSPs, then these market participants will need to ensure that their systems can respond to requests for data, regardless of whether customers (or authorised parties) could also access this data from AEMO.

Accordingly, the draft rules do not provide for customers or authorised third parties to request energy consumption data directly from AEMO. As the energy market evolves and enhancements are potentially made to AEMO's MSATS and B2B systems and the shared market protocol proposed in our advice on open access and common communication standards for smart meters is implemented,⁵⁴ AEMO may have a greater role in facilitating a more coordinated delivery of energy consumption and other data to customers. However, we do not consider that EMRWG's proposed changes are appropriate at present.

54

<http://www.aemc.gov.au/Markets-Reviews-Advice/Framework-for-open-access-and-communication-standards> (accessed 25 July 2014)

We are conscious that EMRWG's submission was received six weeks after submissions closed and we have not had an opportunity to receive comments from other stakeholders. In response to this draft rule determination, we would particularly appreciate receiving submissions from stakeholders on EMRWG's proposal and our position in the draft rule determination relating to this proposal.

4 Allowing a person authorised by a customer to access data

4.1 Rule change proposal

The COAG Energy Council has proposed to allow agents or service providers acting on behalf of a customer (that is, persons or parties authorised by a customer) to obtain access to customers' electricity consumption data from the customers' retailer or DNSP.⁵⁵ The COAG Energy Council stated that the benefit of this proposal is that it would reduce the existing complexity around accessing and receiving consumption information.⁵⁶ It would also make the delivery of energy services more efficient.⁵⁷

The rule change proposal stated that this change will not place additional costs on market participants given that they would already have to provide this information to their customers.⁵⁸

4.2 Stakeholder views

In submissions on the consultation paper, there was general support to give parties authorised by customers the right to request electricity consumption data on behalf of their customers.

In the consultation paper, we sought views on what the appropriate term in the NER or NERR should be to refer to parties authorised by customers to access their data for the provision of services to their customer. The term we have used in the consultation paper was 'agent' or 'service provider' but other submissions suggested variants such as 'authorised parties'⁵⁹ or 'authorised representative'.⁶⁰

In the consultation paper, we sought views as to whether the NER should specify the nature of the consent (for example, requiring explicit informed consent or some other form of consent) required by authorised parties from their customers and any additional privacy obligations over and above those found in existing privacy legislation. Stakeholders provided a range of views on this issue: some stakeholders supported the NER specifying the nature of the consent required;⁶¹ whereas other stakeholders considered that it was unnecessary to specify the nature of the consent or

55 Proposed rule 7.7(a)(7) of the NER.

56 COAG Energy Council, *op. cit.*, p12.

57 COAG Energy Council, *op. cit.*, p12.

58 COAG Energy Council rule change request, p12.

59 AGL, submission on consultation paper, p4; EnerNOC, submission on consultation paper, p5; Ergon Energy, submission on consultation paper, p7.

60 United Energy, submission on consultation paper, p6.

61 Energy Tailors, submission on consultation paper, p5; EnerNOC, submission on consultation paper, p5; PIAC, submission on consultation paper, px; SP AusNet, submission on consultation paper, p16.

additional privacy obligations in the NER because existing privacy legislation is sufficient.⁶²

In addition, the ERAA suggested an alternative approach where authorised parties could access their customers' data from AEMO's MSATS database via a Business-to-Business (B2B) transaction.⁶³

4.3 Analysis

Under clause 7.7(a)(7) of the NER, customers are entitled to access their electricity consumption data but cannot explicitly authorise their agents or service providers to access this data on their behalf. In the power of choice review, the AEMC observed that currently customers have to contact their retailer's call centre to request their data.⁶⁴ The customer then forwards this data to their agents. In the case of agents acting on behalf of industrial or commercial business customers, these agents are required to forward a letter of authority from the customer.⁶⁵

The provision of a clear right in the NER and NERR to enable parties authorised by a customer to obtain access to their customers' electricity consumption data would make it easier for them to access the data that they need to provide innovative services to customers consistent with their preferences and potentially expanding the range of choices available to customers.

In addition, allowing parties authorised by a customer a clear right to access data on behalf of its customers could promote competition in the retail market and the energy/DSP services market. It would enable business models involving parties authorised by a customer to emerge and compete with other market participants to provide a range of services for the benefit of customers.

Further, given the issues with current arrangements, the provision of a clear right for parties authorised by a customer to access data on behalf of its customers would provide regulatory certainty for customers, these authorised parties and market participants. This would therefore promote transparency in the NEM regulatory framework.

While there may be some costs in adapting the processes and procedures for retailers and DNSPs, there was no evidence provided that this would be material and would likely be outweighed by the clear benefits to consumers.

We consider that the appropriate term to describe parties authorised by customers should be couched in broad terms, which would include the legal notion of 'agents', as well as third party service providers and other parties authorised by the customer. In

⁶² AGL, submission on consultation paper, p4; Energex, submission on consultation paper, p6; United Energy, submission on consultation paper, p6; Vector, submission on consultation paper, p7.

⁶³ ERAA, submission on consultation paper, p4.

⁶⁴ AEMC 2012, op. cit., p64.

⁶⁵ AEMC 2012, op. cit., p64.

this respect, the NER draft rule refers to a 'customer authorised representative' which is defined as a person authorised by a retail customer to request and receive information under chapter 7 on the retail customer's behalf.⁶⁶

In relation to whether the NER should specify the nature of consent required by parties authorised by customers, we do not consider that the NER should specify this. We consider that existing laws, including privacy legislation, sufficiently addresses this issue. We consider that it is not generally appropriate for energy market regulations to apply and potentially duplicate obligations found in existing laws. Under this approach, for example, it would be up to the retailer or DNSP to determine what it needs to do to so that it meets its privacy obligations. It would also be up to the parties authorised by the customer to only use the information as permitted by privacy law.

Finally, in response to the ERAA's proposed alternative whereby authorised agents could access their customers' data from AEMO's MSATS through B2B transactions, we did not consider this is a viable alternative at present. There are practical limitations in that MSATS itself does not contain customers' names and therefore customers cannot be identified through this database. We accept that MSATS could be a viable platform for such proposals should the functionality to identify customers be developed in the future, but note that there are legitimate reasons as to why MSATS does not contain customers' names.

⁶⁶ Please see Item 1, Schedule 2 of the *Draft National Electricity Amendment (Customer access to information about their energy consumption) Rule 2014*.

5 Minimum requirements for the provision of electricity consumption data

5.1 Format of data - detailed and summary format

5.1.1 Rule change proposal

The COAG Energy Council proposed that electricity consumption data must be provided in 'raw' data and summary data format.⁶⁷ Raw format data would refer to the metering data obtained from a metering data provider or the settlements ready data prepared by AEMO.⁶⁸ As the raw format data may be difficult to understand, the COAG Energy Council has also proposed that data in a summary format be provided.

The COAG Energy Council proposed that the information provided in the summary data format to customers would depend on the type of metering installation at their premise: accumulation or interval meter.⁶⁹

In relation to data in a summary format for a customer with an accumulation meter, the COAG Energy Council has proposed that, at a minimum, customers should be provided with a 'net distribution system load profile' relevant to the customer's applicable distribution network. This would allow customers with accumulation meters to compare their electricity usage against a representative electricity usage load profile in their area.

In relation to data in a summary format for a customer with an interval meter, the COAG Energy Council has proposed that, at a minimum, customers should be provided with information about:⁷⁰

- the nature and extent of the customer's energy usage for daily time periods calculated by reference to usual peak energy usage;
- the customer's usage or load profile over a specified period; and
- a diagrammatic representation of the above information.

5.1.2 Stakeholder views

In submissions to the consultation paper, there was general consensus that customers should be provided with data in a 'raw'/detailed or summary format. However, there

⁶⁷ See proposed rule 7.16(c) of the NER, COAG Energy Council rule change request.

⁶⁸ The power of choice review final report states that this format would be akin to the existing "NEM 12/13" file format for the exchange of metering data between AEMO and market participants. AEMC 2012, op. cit., p61.

⁶⁹ See proposed rule 7.16(c)(2)-(3) of the NER, COAG Energy Council rule change request. For an explanation of the types of meters, please refer to Appendix A.

⁷⁰ See proposed rule 7.16(c)(2) of the NER. COAG Energy Council rule change request.

were concerns from some market participants that the proposed rule was overly prescriptive and that some of this detail could be left for AEMO to determine in its data provision procedures.⁷¹

In relation to the detailed data format, stakeholders discussed the appropriate type of format that should be adopted in a way that minimises costs for market participants and the NEM12/13⁷² format was a possible suggestion.

In relation to the summary data format, while stakeholders acknowledged that such a format would be beneficial to customers, some stakeholders were concerned about the implementation costs if significant re-engineering of formats was involved.⁷³ On that point, EnerNOC suggested possible ways of summarising data with low implementation costs.⁷⁴ Stakeholders consistently commented that the use of the 'net system distribution load profiles' will not be helpful for customers on accumulation meters as it does not relate to individual customer load shapes.⁷⁵

Following their experience in running the My Power Planner website in Victoria, the Victorian Department of State Development, Business and Innovation expressed their support for a single standardised format rather than catering for a range of formats available in the industry.⁷⁶

5.1.3 Analysis

As the objective of this rule change request is to empower customers to make more informed decisions about their electricity consumption, we consider that customers should have access to their electricity consumption data both in a detailed⁷⁷ and a summary format upon request to a retailer or DNSP. We consider that a detailed format would be particularly useful for authorised parties to provide services to their customers while a summary format would be useful for customers, especially small customers, to understand their electricity consumption data.

We consider that this obligation to provide data in a detailed and summary format should be set out in the NER while the precise format (eg NEM 12/13 or Meter Data File Format (MDFF) format) should be determined by AEMO in its data provision procedures following consultation with stakeholders. We consider that this is the appropriate allocation of obligations between the NER and AEMO's data provision

71 NSW DNSPs, submission on consultation paper, p2; Vector, submission on consultation paper, p5.

72 EnerNOC, submission on consultation paper, p2; SP AusNet, submission on consultation paper, p9.

73 ERAA, submission on consultation paper, p2

74 EnerNOC, submission on consultation paper, p3.

75 ERAA, submission on consultation paper, p2; ERM Power, submission on consultation paper, p3; NSW DNSPs, submissions on consultation paper, p3; Origin Energy, submission on consultation paper, p3.; United Energy, submission on consultation paper, p3.

76 Victorian Department of State Development, Business and Innovation, submission on consultation paper, p2.

77 We consider that the term 'detailed', rather than the term 'raw', more accurately captures the nature of this data.

procedures. This is because the NER has been designed to specify the key minimum requirements and should not be overly prescriptive. AEMO's procedures can then address the necessary details and respond with more flexibility to changes in technology and customer preferences.

We evaluated whether a single standardised summary data format and detailed data format should be developed by AEMO in the data provision procedures and uniformly applied across the NEM.⁷⁸ However, we decided not to adopt this approach. We considered that AEMO's data provision procedures should set out minimum requirements that would ensure customers receive their data in an understandable manner but equally, these minimum requirements should not inhibit innovation among market participants in how they provide this data to customers. This approach should not preclude market participants from offering additional or different forms of information if that is what customers prefer as long as the minimum requirements are available.

In relation to accumulation data, we have removed the reference in clause 7.16(c)(3) of the proposed NERR rule relating to 'net distribution system load profile'. We understand that the aim of this reference to 'net distribution system load profile' was to allow customers to compare their own load profile against the 'net distribution system load profile' as an aid to decision-making. However, as noted from submissions, we do not think that making this comparison would be meaningful for customers and is likely to be confusing.

5.2 Duration of time over which data requests should cover

5.2.1 Rule change proposal

The COAG Energy Council's rule change request did not propose a specific period of time (eg over a 2 year period) over which the electricity consumption data set is to be provided.⁷⁹ However, we sought views as to whether the NER should specify a period of time in relation to which data is to be provided in response to a customer's request and if so, what this time period should be.

5.2.2 Stakeholder views

In submissions on the consultation paper, most submissions were supportive of a two year time frame over which data was to be provided following a request from

⁷⁸ A submission suggested that there be a single industry standard format: Victorian Department of State Development, Business and Innovation, submission on consultation paper, p2.

⁷⁹ However, proposed rule 7.16(c)(2)(ii) of the NER does state that a usage or load profile be provided over a 'specified period'.

customers.⁸⁰ The view was that customers should be able to have a set of data that allows them to distinguish trends in consumption over and above seasonal variations.

Energy Conservation sought clarification as to whether it would be possible to make a rule that allows a customer to recover data from a previous retailer.⁸¹

5.2.3 Analysis

The NERR currently states that a retailer must provide a small customer with historical billing data for the previous two years upon request.⁸² However, the proposed rule in the NERR for retailers and DNSPs to provide 'energy consumption information' is not limited as to the time frame over which that information is to be provided.⁸³

We consider that the NER does not need to specify a period of time over which the electricity consumption data set is to be provided. These obligations are more appropriately placed in the NERR as it deals with the rights of customers as against retailers and DNSPs.

In the NERR, we consider that the requirement for retailers to provide 'energy consumption information' should be limited to the previous two years since the request for data was made.⁸⁴ This is consistent with the current NERR requirement for retailers to provide 'historical billing data' for the previous two years upon request.⁸⁵ Consistency between these two obligations would provide regulatory certainty for customers and retailers as to their respective rights and obligations.

The only qualification to this requirement is if a customer has been a customer of a retailer for a period of time less than two years, then that customer would only be able to request data for the period of time it has been a customer of that retailer.

We have also considered whether clarification is required in the NER to allow customers to access data from a previous retailer of which it was a customer. We note that the Victorian Energy Retail Code already contains provisions for such circumstances.⁸⁶ To promote certainty for customers and market participants by clarifying their respective rights and obligations, we have amended 7.7(a)(7) of the NER to put beyond doubt that customers can access their electricity consumption data from previous retailers. As a minimum requirement, this would be for a period of up to two years prior to the date of the data request or if a customer is a customer of a

⁸⁰ Energy Conservation, submission on consultation paper, p2; EnerNOC, submission on consultation period, p3; Ergon Energy, submission on consultation paper, p6; SP AusNet, submission on consultation paper, p11. Although United Energy considered that NER need not specify a period of time and it should be flexible: United Energy, submission on consultation paper, p4.

⁸¹ Energy Conservation, submission on consultation paper, p2.

⁸² Rule 28 of the NERR.

⁸³ Proposed rule 56A and 86 of the NERR.

⁸⁴ Draft rule 56A of the NERR.

⁸⁵ Rule 28 of the NERR

⁸⁶ See clause 27.2(b) of the Victorian Energy Retail Code.

retailer for a period less than two years (eg. 6 months), then for the period of time that the customer was a customer of that retailer but only as far back as two years from the date of the data request.

In relation to DNSPs, we consider that customers should be able to request information about their energy consumption from a DNSP without a time limitation over which that information is to cover.⁸⁷ We consider this to be appropriate because while a customer may be a customer of a series of retailers over time, it is likely to only have one DNSP at that premise and may need access to historical information going further back in time. This approach is also consistent with existing policy settings in the NECF in relation to DNSPs and the provision of information.⁸⁸

5.3 Time frame for retailer and DNSP to respond to a data request

5.3.1 Rule change proposal

The COAG Energy Council has proposed that DNSPs and retailers must respond to a request to provide data within 10 business days.⁸⁹

5.3.2 Stakeholder views

In response to submissions on the consultation paper, most submissions were supportive of a 10 business day time frame for retailers and DNSPs to respond to request for data from customers, particularly if it is 'manual' data request in the sense that it requires the retailer or DNSP to undertake processes to respond to that data request.⁹⁰ However, stakeholders suggested that the 10 business day time frame should be able to be extended in the event of certain contingencies such as when there are a high volume of data requests from customers at one time,⁹¹ difficulties in verifying the identity of a customer or complexities in obtaining the data,⁹² or customer agents request data for a large batch of customers.⁹³

Some stakeholders noted that where automated access to data is available, such as through web portals, then access to data could occur immediately.⁹⁴

87 Draft rule 86 of the NERR.

88 Rule 86 of the NERR.

89 See proposed rule 7.16(c)(6) of the NER, COAG Energy Council rule change request.

90 AGL, submission on consultation paper, p2; ERAA, submission on consultation paper, p3. Although, in contrast, Energy Tailors expressed its support for a 2 business day time frame to respond under a reasonable endeavours obligation if automated systems are available: Energy Tailors, submission on consultation paper, p4.

91 United Energy, submission on consultation paper, p4.

92 NSW DNSPs, submission on consultation paper, p4; Vector, submission on consultation paper, p5.

93 Energex, submission on consultation paper, p5.

94 Energy Conservation, submission on consultation paper, p4.

5.3.3 Analysis

In the power of choice review, a stipulated time frame for market participants to respond to a data request was recommended. This recommendation was made in response to issues raised by stakeholders that when customers request their billing or metering data from retailers, they experience no response or time delays.⁹⁵ That review recommended arrangements for the timely provision of information to customers.⁹⁶

To address the above concerns and to provide certainty and transparency to customers (or authorised parties), we consider that a maximum time frame for retailers and DNSPs to respond to a request for data should be stipulated in the NER. We considered that the maximum time frame should not be more than 10 business days with the precise time frame to be specified by AEMO in its data provision procedures. By providing AEMO with the discretion to set the precise time frame in the procedures (but not exceeding 10 business days) this allows for the possibility for market participants to progressively improve the timeliness of their response due to advances in technology.

We consider that the obligation to respond within a specified period of time should be a 'reasonable endeavours' obligation. This caters for reasonable circumstances, as suggested in submissions, where a retailer or DNSP may require a longer period of time to respond to a data request.

5.4 When data requests are free of charge or subject to a reasonable fee

5.4.1 Rule change proposal

The COAG Energy Council proposed that electricity consumption information requested by a customer be provided free of charge unless the information is requested more than once in a 'billing period' or is not in accordance with the minimum requirements set out in the metering rules.⁹⁷

5.4.2 Stakeholder views

Submissions from retailers and DNSPs supported maintaining current arrangements where customers can receive their data once every 12 months for free.⁹⁸ Some

⁹⁵ AEMC 2012, op. cit., p54.

⁹⁶ Note, there are currently no time frames in the NER or NERR.

⁹⁷ See proposed rule 56A(2) and proposed rule 86(4) of the NERR, COAG Energy Council rule change request. The metering rules for electricity are defined in the NERR as relating to those applicable rules in the Retail Market Procedures and Chapter 7 of the NER.

⁹⁸ Alinta Energy, submission on consultation paper, p3; ERAA, submission on consultation paper, p3; Ergon Energy, submission on consultation paper, p7; Origin Energy, submission on consultation paper, p5.

stakeholders suggested a more frequent basis for free data requests such as once per billing period⁹⁹ or even once per calendar week if automated solutions were in place.¹⁰⁰

Stakeholders supported a reasonable fee should be payable in circumstances where there are multiple requests in a given time period¹⁰¹ or for data requests for non-standard customer profiles.¹⁰² The Energy Networks Association recognised that there may be circumstances where a reasonable fee could be waived such as for vulnerable customers.¹⁰³ NSW DNSPs suggested that the basis for such a fee would be to cover expenses directly or reasonably incurred in providing information to customers.¹⁰⁴

5.4.3 Analysis

Determining whether a customer's request for data should be provided free of charge or subject to a reasonable fee imposed by market participants needs to appropriately balance a customer's entitlement to readily access their data against any costs incurred by market participants in responding to such data requests. In finding that balance, we considered a range of circumstances for data requests.

We consider that as a minimum requirement, customers should be able to receive their data free of charge once every 3 months. We consider that given present technologies and the current pace of change in the energy market, that the current arrangements of once every 12 months is too infrequent. If a customer wants to manage its energy use and costs under time of use pricing and wants to determine if its actions to reduce or shift its usage are effective, then receiving data once a year is likely not to be frequent enough to make an informed decision.

This minimum requirement could be reformulated to allow customers to receive their data free of charge up to 4 times over a 12 month period. Expressing the minimum requirement in this way could allow customers to give free access to their data to up to 4 energy service providers within a 12 month period so that a customer can receive a range of quotes and can compare product and service offerings between providers. We welcome views from stakeholders on whether this minimum requirement would be better expressed in this way.

This minimum requirement does not preclude innovation by market participants to provide their customers access to data free of charge more frequently where there is automated or self-service access, such as through web portals. Also, we decided not to

⁹⁹ Energy Conservation, submission on consultation paper, p4.

¹⁰⁰ Energy Tailors, submission on consultation paper, p4.

¹⁰¹ SP AusNet, submission on consultation paper, p13.

¹⁰² NSW DNSPs, submission on consultation paper, p4.

¹⁰³ Energy Networks Association, submission on consultation paper, p2.

¹⁰⁴ NSW DNSPs, submission on consultation paper, p4.

set the frequency of free data requests in the NER by reference to a 'billing period' as billing periods vary between retailers.

We recognise that a reasonable fee could be charged for data requests that are above minimum requirements or more often than once every 3 months. A reasonable fee could also be payable when a customer requests a set of data from one of its previous retailers.

5.5 Application of clause 56A of the NERR to large customers

5.5.1 Rule change proposal

In the COAG Energy Council's rule change request, proposed rule 56A of the NERR states that a retailer must provide a 'customer' with information about that customer's energy consumption upon request. The drafting of rule 56A of the NERR referring to 'customer' without qualification implies that large customers can also request electricity consumption information. In contrast, rule 28 of the NERR only requires retailers to provide historical billing data for 'small' customers.¹⁰⁵

5.5.2 Stakeholder views

Stakeholders consistently suggested that proposed rule 56A of the NERR should only apply to small customers because large customers would have their own contracts in place.¹⁰⁶

5.5.3 Analysis

We consider that rule 56A of the NERR should be limited in its application to small customers. This is because, as noted in most submissions, large customers would have their own contractual arrangements in place. Further, rules relating to standard and market retail contracts apply only to small customers. The minimum requirements are designed primarily to help small customers have better access to their electricity consumption data.

¹⁰⁵ A small customer is defined in section 5 of the NERL as a residential customer or a business customer who consumes energy at its business premises below the upper consumption threshold. The actual value of the threshold varies by jurisdiction.

¹⁰⁶ AGL, submission on consultation paper, p4; Alinta Energy, submission on consultation paper, p4; Energex, submission on consultation paper, p5; Energy Tailors, submission on consultation paper, p5; ERAA, submission on consultation paper, p3; Ergon Energy, submission on consultation paper, p7; Origin, submission on consultation paper, p6; SP AusNet, submission on consultation paper, p14; United Energy, submission on consultation paper, p6; Vector, submission on consultation paper, p6. But note a contrary view in EnerNOC, submission on consultation paper, p4.

5.6 Time frame for AEMO to make and revise procedures

5.6.1 Rule change proposal

In the proposed rule, there was an obligation to specify a time frame in the NER for AEMO to make the initial version of the data provision procedures.¹⁰⁷ Also, the proposed rule contained an obligation for AEMO to revise these guidelines at least once over a time frame to be specified in the NER.¹⁰⁸

5.6.2 Stakeholder views

In terms of when AEMO's initial data provision procedures should come into force, some stakeholders suggested that AEMO should publish the initial set of data provision procedures before the proposed rule takes effect.¹⁰⁹ Other stakeholders suggested specific time frames for AEMO to make the procedures and for market participants to change their processes and systems.¹¹⁰ SP AusNet suggested that AEMO should not be responsible for developing the data provision procedures because it is industry facing rather than customer facing.¹¹¹

In relation to how frequently the data provision procedures should be reviewed by AEMO, stakeholders provided a range of views from 1 year¹¹² to up to 5 years¹¹³ with most respondents suggesting it be reviewed every 2-3 years.¹¹⁴ Some stakeholders suggested it be reviewed on an 'as needed' basis¹¹⁵; indeed, United Energy noted that there was an existing provision in Chapter 7 of the NER allowing AEMO to review the procedures upon request.¹¹⁶

5.6.3 Analysis

We propose that should the rule be made, it will take effect immediately on the date the rule is made. AEMO's data provision procedures would take effect three months

¹⁰⁷ Proposed rule 7.16(e) of the NER.

¹⁰⁸ Proposed rule 7.16(f) of the NER.

¹⁰⁹ Energex, submission on consultation paper, p5; Ergon Energy, submission on consultation paper, p7.

¹¹⁰ Alinta Energy, submission on consultation paper, p4; Energy Tailors, submission on consultation paper, p4; Origin, submission on consultation paper, p5; United Energy, submission on consultation paper, p5.

¹¹¹ SP AusNet, submission on consultation paper, p14.

¹¹² Energy Tailors, submission on consultation paper, p4.

¹¹³ AGL, submission on consultation paper, p3.

¹¹⁴ Energex, submission on consultation paper, p5; Energy Conservation, submission on consultation paper, p4; Ergon Energy, submission on consultation paper, p7; Origin, submission on consultation paper, p5; PIAC, submission on consultation paper, p2.

¹¹⁵ Vector, submission on consultation paper, p6.

¹¹⁶ United Energy, submission on consultation paper, p6.

after AEMO publishes these procedures. Implementing the rule in this way would allow customers (or authorised parties) to request their electricity consumption data from retailers and DNSPs as soon as the rule comes into effect although the minimum requirements in the data provision procedures would not apply until those procedures are made. AEMO would also have time to develop, consult upon and publish the data provision procedures while also allowing industry to change their systems and processes in compliance with these procedures.

In relation to revising AEMO's data provision procedures, we consider that a specific period of time to review the procedures need not be stipulated in the NER because there are existing processes to revise procedures in Chapter 7 of the NER.¹¹⁷ If substantive changes to the data provision procedures are made, then these changes will only come into effect after a 3 month delay. This should provide industry with sufficient time to change their systems and processes to comply with substantive changes to the data provision procedures.

¹¹⁷ See 7.1.4 of the NER.

6 General information about electricity consumption data

6.1 Rule change proposal

The COAG Energy Council proposed that retailers and distributors be required to make information available to customers outlining who may access data obtained from the meter and for what purposes electricity consumption data is used.¹¹⁸ The rule change stated that this will provide for consistent treatment of data obtained from the meter, regardless of whether or not metering data is personal information.¹¹⁹ This was considered to be consistent with how similar information is provided on personal information under privacy legislation.¹²⁰

In particular, the rule change proposed that:

- the AER develop 'metering data common terminology' guidelines. These common terms would relate to how electricity consumption data is used in the NEM by retailers and any other parties; and
- retailers and DNSPs publish information on their websites about how such electricity consumption data is used. This website information would include:¹²¹
 - what parties may have access to metering data;
 - the circumstances in which metering data would be disclosed to parties other than the customer's retailer and DNSP;
 - when metering data is used and for what purpose;
 - options customer may have to stop the use of metering data; and
 - how metering data is protected by regulation and by the customer and DNSP.

6.2 Stakeholder views

In the consultation paper, we sought views from stakeholders whether retailers and DNSPs should be required to publish information on their websites about how electricity consumption data is used. Market participants generally did not support extending the NER and the NERR to publish this information beyond the safeguards

¹¹⁸ COAG Energy Council, *op. cit.*, p6.

¹¹⁹ COAG Energy Council, *op. cit.*, p6.

¹²⁰ COAG Energy Council, *op. cit.*, p6.

¹²¹ Proposed rule 56(1A) and 86(2) of the NERR. See COAG Energy Council, *op. cit.*, p8.

found in privacy law.¹²² However, some stakeholders expressed their support for this information to be published centrally by AEMO or the AER.¹²³ In contrast, consumer groups and energy services firms were supportive of this proposal and considered that providing standardised information on how electricity consumption data is used could be of value to customers.¹²⁴

We also sought views from stakeholders on whether the AER should be required to publish 'metering data common terminology' guidelines. There were a broad range of views on this proposal, both in support¹²⁵ and in opposition¹²⁶ to the proposal. As an alternative to guidelines, it was suggested that a plain English fact sheet could be published by AEMO/AER as a reference for use by market participants.¹²⁷ AER expressed its uncertainty as to whether such guidelines need to be prescribed and in the event that such guidelines were required, it suggested that AEMO would be better placed to develop these guidelines.¹²⁸

6.3 Analysis

The COAG Energy Council's proposal stems from its investigations into the privacy implications given the increased uptake of consumers using smart meters. The COAG Energy Council commissioned a report by Seed Advisory, which found that while privacy safeguards were generally strong, it nevertheless strongly recommended enhancing customer awareness and education to provide further customer certainty and address customer concerns arising from a lack of information.¹²⁹

One of the Commission's three strategic priorities - the consumer priority - focuses on empowering consumers to participate more confidently in the energy supply chain where they choose to do so.¹³⁰ We note that our power of choice review recommended a comprehensive consumer communication and engagement strategy.¹³¹ Improving customer engagement and education is a key focus of our work.

122 Alinta, submission on consultation paper, p5; AGL, submission on consultation paper, p5; Energex, submission on consultation paper, p6; ENA, submission on consultation paper, p3; Ergon Energy, submission on consultation paper, p5; NSW DNSPs, submission on consultation paper, p5.

123 Energy Tailors, submission on consultation paper, p6; Origin, submission on consultation paper, p7; SPAusnet, submission on consultation paper, p17;

124 Energy Conservation, submission on consultation paper, p5; PIAC, submission on consultation paper, p2.

125 Energex, submission on consultation paper, p6.

126 ERAA, submission on consultation paper, p5; United Energy, submission on consultation paper, p7; Vector, submission on consultation paper, p8.

127 Alinta, submission on consultation paper, p5;

128 AER, submission on consultation paper, p2.

129 Seed Advisory, op. cit., p8. See section 1.2.2 of this draft rule determination.

130 The AEMC's other strategic priorities are the market priority and the gas priority. For further information please see www.aemc.gov.au

131 AEMC 2012, power of choice review final report - chapter 2.

It is within this context that we have considered the COAG Energy Council's proposal to provide general information to consumers about how metering data is used and who has access to it. We note that the Seed Advisory report commissioned by the COAG Energy Council did not specifically recommend publishing information on retailers and DNSPs' websites nor recommended that meter data common terminology guidelines be published. While we strongly support reforms to enhance energy literacy and consumer engagement, we considered that there is insufficient evidence that publishing information on metering data on websites using common terms will promote consumer engagement or materially reduce any privacy concerns of customers. Indeed, there was insufficient evidence from submissions of a market failure or a material risk that would necessitate this additional form of regulation.

We consider that any privacy concerns are better addressed through existing privacy legislation to the extent that meter data is personal information. The existing privacy statements of market participants can cover meter data and several already do.¹³²

In addition, we found no examples of other sectors requiring the publication of this type of information and we consider that there is not a clear case that electricity consumption data should be treated differently to other types of data some of which, such as medical records, are likely to be significantly more sensitive.

However, notwithstanding the above and stepping beyond the direct scope of this rule change request, we recognise that industry may, on its own volition, choose to pursue a voluntary industry code under the Australian Privacy Principles in the Privacy Act if it considers there is a need to do so.¹³³

¹³² See for example the privacy policies of Ausgrid, EnergyAustralia, Origin Energy and SP AusNet available on their respective websites.

¹³³ This was suggested by SP AusNet, see: SP AusNet, submission on consultation paper, p7.

Abbreviations

AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
B2B	Business-to-Business
Commission	Australian Energy Market Commission
DNSP	Distribution Network Service Provider
DSP	demand side participation
EMRWG	Energy Market Reform Working Group
MCE	Ministerial Council on Energy
MDFP	Meter Data File Format
MDP	Metering Data Provider
MSATS	Market Settlement and Transfer Solution
NECF	National Energy Customer Framework
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
NERL	National Energy Retail Law
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules

A Legal requirements under the NEL and the NERL

This appendix sets out the relevant legal requirements under the National Electricity Law and National Energy Retail Law for the AEMC in making this draft rule determination.

A.1 Draft rule determination

In accordance with section 99 of the NEL and section 256 of the NERL, the Commission has made this draft rule determination in relation to the rule proposed by the COAG Energy Council.

A.2 Power to make the rule

The Commission is satisfied that the draft rule falls within the subject matter about which the Commission may make rules.

The draft rule falls within section 34 of the NEL. Specifically, it relates to:

- the activities of persons (including Registered participants) participating in the national electricity market or involved in the operation of the national electricity system (section 34(1)(a)(iii)); and
- facilitating and supporting the provision of services to retail customers (section 34(1)(aa)).

Further, the draft rule falls within the matters set out in schedule 1 to the NEL as it relates to item 32 because it relates to procedures and related systems for the electronic exchange or transfer of information that relates to consumers of electricity, the provision of metering services and connection to the national electricity system, and requiring compliance with such procedures and use of such related systems.

The draft rule also falls within section 237 of the NERL. Specifically, it relates to:

- the activities of persons involved in the sale and supply of energy to customers (section 237(1)(a)(ii)); and
- the provision of information about matters associated with the use of smart meters and other related technologies (section 237(2)(ia)(v)).

A.3 Commission's considerations

In assessing the rule change request, the Commission has considered:

- the Commission's powers under the NEL and NERL to make the Rule;
- the rule change request;

- stakeholder submissions received during first round consultation;
- the fact that there is no relevant Ministerial Council on Energy (MCE) statement of policy principles;¹³⁴
- submissions received during first round consultation;
- the Commission's analysis as to the ways in which the draft rule will or is likely to, contribute to the National Electricity Objective and the National Energy Retail Objective; and
- compatibility with any relevant consumer protections.

A.4 Power to make a more preferable rule

Under section 91A of the NEL and section 244 of the NERL, the AEMC may make a rule that is different (including materially different) from a market initiated proposed rule (a more preferable rule) if the AEMC is satisfied that, having regard to the issues that were raised by the market initiated proposed Rule (to which the more preferable Rule relates), the more preferable Rule will or is likely to better contribute to the achievement of the NEO and NERO, respectively.

¹³⁴ Under section 33 of the NEL the AEMC must have regard to any relevant MCE statement of policy principles in making a Rule.

B Further issues raised in submissions

Stakeholder	Issue	AEMC Response
SP AusNet	In light of the suite of Power of Choice recommendations, SP AusNet is concerned with the timetable to implement the rule change noting the required work by AEMO and subsequent compliance work by industry (p1).	The AEMC is progressing the power of choice reforms in an integrated manner. As discussed in section 5.5.3, we have taken into account time needed by AEMO and by industry to implement the reforms resulting from this rule change request.
NSW DNSPs	NSW DNSPs sought to clarify whether DNSPs can provide customers or their agents access to NMI standing data (p6).	Yes, the draft rule can allow DNSPs to provide customers, or parties authorised by customers, access to NMI standing data to the extent that such data is relevant to a customer's metering installation.
NSW DNSPs	NSW DNSPs consider clause 86 of the NERR should be amended to include reference to agents (p2).	Yes, the draft rule in the NERR has been drafted to include parties authorised by customers.
Ergon Energy	Ergon Energy sought clarification on the purpose of proposed clause 7.7(a2) of the NER (p5).	The purpose of proposed clause 7.7(a2) of the NER is to preserve the operation of privacy legislation.