

Australian Energy Market Commission

CONSULTATION PAPER

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

8 May 2014

RULE
CHANGE

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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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1 Introduction

1.1 Purpose of this paper

On 23 October 2013, the COAG Energy Council (formerly called the Standing Council on Energy and Resources) submitted a Rule change request to the Australian Energy Market Commission (AEMC or Commission) in relation to customer access to information about their energy consumption.

This consultation paper has been prepared to facilitate public consultation and to seek stakeholder submissions on the rule change request.

This paper:

- provides a summary of, and a background to, the rule change request;
- outlines the proposed framework the AEMC intends to use in assessing the rule change request;
- identifies a number of issues and sets out questions to facilitate consultation on the rule change request; and
- outlines the process for making submissions.

1.2 Time frame for the rule change process

Under the AEMC's rule making process, the expected time frame for this rule change request is as follows:

- close of submissions on the consultation paper - 5 June 2014;
- publication of the draft rule determination - August 2014;
- close of submission on the draft rule determination - September 2014; and
- publication of the final rule determination - November 2014.

2 Background

This chapter provides relevant background to the rule change request, in particular:

- the AEMC's Power of choice review; and
- related reforms:
 - the COAG Energy Council's work on privacy and smart meters; and
 - Australian government's energy information hub.

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 seeks 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 has developed a work program to implement the reforms, which covers 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 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 (information, education, technology and flexible pricing options) for consumers to

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/>.

make more informed choices about the way they use electricity.⁴ 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 and other related reforms. As illustrated in Table 2.1, these reforms are being implemented by the AEMC through rule changes and reviews as well as by COAG Energy Council officials.

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.

Table 2.1 Broader package of reforms following the Power of choice review and related reforms

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
	Reform of demand management embedded generation incentive scheme ¹⁰
AEMC reviews	Electricity customer switching ¹¹
	Framework for open access and common communication standards for smart meters ¹²
COAG Energy Council work	Demand response mechanism – option for demand side resources to participate in the wholesale electricity market ¹³
	Regulation of third party energy service providers ¹⁴
	Implementation of recommendations made in the National smart meter consumer protection and safety review ¹⁵

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>

⁹ <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/whole-sale-market-demand-response-mechanism-in-the-national-electricity-market/>

¹⁴ <http://www.scer.gov.au/files/2013/05/DSP-Work-Plan-Updated-May-2013.pdf>. (Item 28)

¹⁵ <http://www.scer.gov.au/workstreams/energy-market-reform/demand-side-participation/smart-meters/consumer-protections/>

2.2 Related reforms

2.2.1 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: Lockstep¹⁶. 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 light of broader federal, state and territory legislative arrangements relating to privacy.¹⁷ In general, Seed Advisory upheld Lockstep's 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.¹⁸

The findings of this report have served as an input into some of the proposals within this rule change request.¹⁹

2.2.2 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.²⁰ 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.

¹⁶ The Lockstep, Privacy Impact Assessment Report, August 2011.

¹⁷ Seed Advisory, Privacy for the National Smart Metering Program - Report for the Energy Market Reform Working Group, 7 August 2013, p5.

¹⁸ Seed Advisory, *op. cit.*, p8.

¹⁹ Please see Chapter 7 of this consultation paper.

²⁰ Please see:
<http://www.innovation.gov.au/Energy/EnergyMarkets/ElectricityMarketDevelopment/Pages/ConsumerEnergyDataAccess.aspx> (accessed 6 May 2014).

3 Details of the rule change request

3.1 Issues to be addressed by the 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'²¹.

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.²² Also, it is difficult for customers to enable other parties to have access to this data.²³

In addition, as noted in section 2.2.1, 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.

3.2 Summary of the rule change request

In response to the issues identified in the preceding section, this rule change proposes to:

- clarify that customers or parties authorised by customers are entitled to have access to their electricity consumption data from either their retailer or distribution network service provider (DNSP);
- require the Australian Energy Market Operator (AEMO) to develop 'data provision procedures' that must be complied with by registered participants²⁴. These procedures 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.

These proposals are described in more detail in chapters 5 to 7.

²¹ Please refer to Appendix A for a detailed description of electricity consumption data and meters.

²² AEMC, op. cit., p54.

²³ AEMC, op. cit., p54.

²⁴ Registered participants are defined in Chapter 2 of the NER and include generators, network service providers and retailers.

The rule change request proposes changes to both the NER and the National Energy Retail Rules (NERR)²⁵.

3.3 COAG Energy Council's assessment against the NEO and NERO

3.3.1 COAG Energy Council's assessment against the NEO

The COAG Energy Council considered that the proposed changes contribute to the achievement of the National Electricity Objective (NEO) as they provide certainty, consistency and transparency to customers in relation to requesting and receiving electricity consumption data.²⁶

The COAG Energy Council also considered that providing customers with accessible and timely information about their electricity consumption use and patterns would help them make more efficient decisions with respect to their electricity consumption.²⁷ This would also reduce transaction costs for customers in obtaining, interpreting and using the data to better understand the relationship between energy use and energy costs.

In the rule change request, the COAG Energy Council stated that enabling customers to have better access to, and an understanding of, their electricity consumption data, would build up awareness of the potential opportunities to manage, use and realise the value of efficient DSP.²⁸ This could occur by encouraging customers to investigate appropriate DSP products and services, engage with third parties, and make efficient investment decisions that reflect individual circumstances.

Also, increasing transparency would promote greater competition in the retail market and assist market participants and third parties to develop innovative DSP products.²⁹

Finally, increased customer awareness of their electricity consumption patterns could help manage peak demand impacts on the network, which would facilitate efficient investment in, and use of, network services.³⁰

3.3.2 COAG Energy Council's assessment against the NERO

The rule change request also relates to the NERR. Before making a change to the NERR, the AEMC must be satisfied that the proposed rule contributes to the achievement of the National Energy Retail Objective (NERO).³¹ As set out in section 4

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

26 COAG Energy Council rule change request, p10.

27 COAG Energy Council, op. cit., p10.

28 COAG Energy Council, op. cit., p10.

29 COAG Energy Council, op.cit., p10.

30 COAG Energy Council, op. cit., p11.

31 Section 236(1) of the National Energy Retail Law.

of this consultation paper, the NERO is similar to the NEO in that both involve considerations of efficiency and the long term interests of consumers. While the COAG Energy Council did not expressly address why the rule change request meets the NERO, the comments relating to how the rule change request promotes efficiency under the NEO are likely to be similarly applicable to an assessment against the NERO.

3.4 COAG Energy Council's identified benefits and costs of the rule change request

The COAG Energy Council considered that the benefits of the proposed change are that it would reduce the existing complexity around accessing and receiving electricity consumption information, including providing this to authorised parties.³² The COAG Energy Council also stated that it will also make the delivery of energy services more efficient.³³

The COAG Energy Council considered that it will not place significant additional costs on retailers or other responsible parties.³⁴ In particular, the COAG Energy Council considered that the:³⁵

- requirement to provide data in a standard format will not result in significant additional costs as systems are already in place to exchange data to enable market settlement. AEMO may incur some administrative costs in developing a standard format for different categories of customers, but this is not expected to be significant;
- appropriate time frame for providing the data is proposed to be 10 business days, but this is not expected to place significant costs on AEMO or retailers;
- transfer of electricity consumption information to authorised agents is not likely to place additional costs on retailers or metering data providers given that they would have to provide the information to customers in any case; and
- information about how metering data is used in the form of information sheets available on retailers or DNSPs' websites and developing a common terminology is likely to result in minor costs.

32 COAG Energy Council, op. cit., p11.

33 COAG Energy Council, op. cit., p11.

34 COAG Energy Council, op. cit., p11.

35 COAG Energy Council, op. cit., pp11-12.

4 Proposed assessment framework

This chapter:

- sets out the requirements under the National Electricity Law that the AEMC must satisfy in considering the rule change request and, based on those requirements, provides the AEMC's proposed framework for assessing this rule change request; and
- sets out the requirements under the National Energy Retail Law that the AEMC must satisfy in considering the rule change request and, based on those requirements, provides the AEMC's proposed framework for assessing this rule change request.

4.1 Requirements under the NEL and proposed assessment framework

4.1.1 National Electricity Objective

The AEMC must assess proposed changes to the NEL based on whether the proposed rule contributes to the achievement of the NEO as set out under section 7 of the National Electricity Law (NEL).

Box 4.1: National Electricity Objective

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.

4.1.2 Proposed assessment framework under the NEL

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 expects to consider the following issues:

- *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 market 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?

Question 1 Proposed assessment framework under the NEL

a) Do you consider that the proposed issues to consider are appropriate for this rule change request? Are there any other issues that we should consider?

4.2 Requirements under the NERL and proposed assessment framework

Any changes to the NERR must satisfy two tests under the National Energy Retail Law (NERL); that is, the AEMC must satisfy itself that the proposed rule meets the NERO test and, where relevant, must also satisfy the consumer protections test. Both tests are explained below.

4.2.1 National Energy Retail Objective

The AEMC must assess proposed changes to the NERR as to whether the proposed rule contributes to the achievement of the NERO as set out under section 13 of the NERL. The NERO states:

Box 4.2: National Energy Retail Objective

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.

4.2.2 Consumer protections test under the NERL

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").³⁶ 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.³⁷ If the Commission is not satisfied that both tests have been met, the rule cannot be made.

³⁶ See section 236(2)(b) of the NERL.

³⁷ That is, the legal tests outlined in section 236(1) and 236(2)(b) of the NERL.

4.2.3 Proposed assessment framework under the NERL

The proposed framework to assess whether the rule change contributes to the achievement of the NERO is the same as the proposed framework for the NEO, which is outlined in section 4.1.2. 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.

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.³⁸ 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 propose to assess whether the proposed rule is compatible with the development and application of this class of consumer protections for small customers.

Question 2 Proposed assessment framework under the NERL

a) Do you consider that it is appropriate that the proposed issues to consider, which we will use as a basis to assess whether the proposed rule meets the NERO, should be the same as those used for assessment against the NEO?

b) Are consumer protections that relate to the provision of information to customers the relevant class of consumer protections for consideration in this rule change request? Are there any other relevant classes of consumer protections that we should consider?

4.3 Issues for consideration

Taking into consideration the Commission's proposed assessment framework and the potential implementation of the proposed rule, we have identified a range of issues that we are seeking stakeholder views on. We outline these issues, including relevant background information, and a number of questions for stakeholder comment in chapters 5 to 7 of this paper.

The issues outlined in chapters 5 to 7 are provided for guidance only. Stakeholders are encouraged to consider and comment on these issues as well as any other aspects of the rule change request or this paper, including the proposed assessment framework.

³⁸ Please refer to Appendix A which outlines the consumer protections relevant to this rule change request.

5 Customer access to its electricity consumption data

In this chapter we describe and discuss elements of the rule change proposal relating to customers accessing their electricity consumption data. We have also set out consultation questions for stakeholder comment.

5.1 Overview of the proposal

Currently, under clause 7.7(a) of the NER, customers are entitled to access their electricity consumption data (that is, metering and settlements ready data³⁹) by requesting that data from retailers. However, the power of choice review found that customers have difficulties obtaining this data from their retailers and recommended that regulatory arrangements be clarified to enable customers to more readily access their electricity consumption data.

To address these concerns, the COAG Energy Council submitted this rule change request to better enable customers to get access to their electricity consumption data. The COAG Energy Council proposed minimum requirements for the provision of electricity consumption data in the NER. This is achieved by:

- requiring AEMO to develop 'data provision guidelines';⁴⁰ and
- requiring registered participants and metering data providers to comply with these data provision guidelines.⁴¹

5.2 Obtaining access to electricity consumption data from DNSPs and MDPs

At present, the NER entitles customers to access their electricity consumption data by requesting that data from retailers only.⁴² 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. Extending customers' entitlement to access their electricity consumption data from DNSPs harmonises the approach in the NER with the existing arrangements in the NERR, under which small customers can obtain certain data from retailers or DNSPs.⁴³

The ability for customers to access their electricity consumption data from DNSPs would be particularly useful for large industrial and commercial customers who may

³⁹ As defined under chapter 10 of the NER. Please refer to Appendix A.

⁴⁰ Proposed rule 7.16 of the NER.

⁴¹ Proposed rule 7.16(g) of the NER.

⁴² 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.

⁴³ See rules 28 and 86 of the NERR. Please note that rule 28 of the NERR only applies to small customers.

have direct interactions with the DNSP. However, some small customers may not have direct interactions with their DNSP.

The rule change also states that Metering Data Providers (MDPs) may provide electricity consumption data directly to customers.⁴⁴ However, the proposed rule does not specifically address this point. We are interested in views as to whether MDPs should be able to provide electricity consumption data directly to customers or their agents.

Question 3 Obtaining access to electricity consumption data

a) Do you think it is appropriate that the NER be amended to allow a customer to access its consumption data by requesting that data from its DNSP?

b) Should MDPs be able to provide electricity consumption data directly to customers or their agents?

5.3 Conditions of access to electricity consumption data

In this section we discuss issues relating to the conditions placed on market participants when providing their customers with access to their electricity consumption data.

5.3.1 Minimum format requirements for electricity consumption data

In its rule change request, the COAG Energy Council proposed minimum format requirements for the provision of electricity consumption data by retailers or distributors to their customers.⁴⁵ The rule change request has proposed that these minimum requirements would be set out in 'data provision procedures' made by AEMO that must be complied with by registered participants and MDPs.⁴⁶

The COAG Energy Council's proposal is a response to issues raised by stakeholders in the AEMC's power of choice review, which noted that when customers request their electricity consumption information from retailers, the data provided is too difficult to interpret or use.⁴⁷ That review recommended a framework that would provide electricity consumption data in a minimum format with standardised information for customers.⁴⁸

44 COAG Energy Council, op. cit., p2.

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

46 See proposed rule 7.16(b) and 7.16(g) of the NER.

47 AEMC 2012, op. cit., p54.

48 AEMC 2012, op.cit., p55.

Raw format data and summary format data

The COAG Energy Council has proposed that electricity consumption data must be provided in raw data and summary data format.⁴⁹ Raw format data would refer to the metering data obtained from a metering data provider or the settlements ready data prepared by AEMO.⁵⁰ 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.

As raw electricity consumption data is already available to retailers and DNSPs, the COAG Energy Council considers that the provision of this data would not pose significant costs on market participants. However the provision of summary data would involve some manipulation of the raw data by retailers and DNSP which could impose potential costs on these market participants.

While recognising these potential costs, the provision of a summary data format could make the data more understandable and therefore accessible to customers. This would enable customers to make more informed and efficient electricity consumption decisions. There is a potential trade-off between minimising any costs on market participants to provide data in a summary format against the benefit in providing customers with their data in an understandable format.

Requirements for summary data

The COAG Energy Council has 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.⁵¹

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:⁵²

- the nature and extent of the customer's energy usage for daily time periods calculated by reference to usual peak energy usage;

⁴⁹ See proposed rule 7.16(c) of the NER, COAG Energy Council rule change request.

⁵⁰ 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.

⁵¹ 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.

⁵² See proposed rule 7.16(c)(2) of the NER. COAG Energy Council rule change request.

- the customer's usage or load profile over a specified period; and
- a diagrammatic representation of the above information.

The above are only the proposed minimum requirements; the exact requirements would be set out by AEMO in the proposed data provision guidelines.

The benefit of providing data in a summary format depending on the type of metering installation would be to make the information provided more meaningful to customers. This would be achieved by providing comparative electricity consumption information against which customers can evaluate their pattern of electricity consumption. However, the potential benefits of this proposal would need to be assessed against any costs to be borne by market participants in providing data in a summary format for interval and accumulation meters.

A possible alternative is that AEMO could extract electricity consumption data from Market Settlement and Transfer Solutions (MSATS) database⁵³, then prepare a report summarising this data and send this report to retailers or DNSPs. Retailers or DNSPs could then use this report to provide electricity consumption information to its customers. This proposal would involve AEMO processing and creating summary data, rather than retailers or DNSPs having to do so. Any administrative costs on AEMO if it were to adopt this function would also need to be considered. We are interested in stakeholders' views on whether this alternative approach is worth considering further.

Specified period of time for data to be provided

The COAG Energy Council's rule change request does not propose a specific period of time in relation to which the electricity consumption data is to be provided.⁵⁴ We note that the NERR currently states that a retailer must provide a small customer with historical billing data for the previous two years upon request.⁵⁵ We are interested in 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.

Manner of delivery

The COAG Energy Council also proposed that the manner of providing electricity consumption data to a customer must allow for web portal, electronic and hard copy delivery.⁵⁶ In the power of choice review, the AEMC's view was that it would not

⁵³ The MSATS database is where settlements ready data - the data used for billing purposes - is stored.

⁵⁴ 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'.

⁵⁵ Rule 28 NERR.

⁵⁶ Proposed rule 7.16(c)(7) of the NER.

mandate a particular delivery method and noted that consumers are likely to drive how the data is delivered.⁵⁷

Question 4 Minimum format requirements for electricity consumption data

- a) What is the nature and magnitude of costs on market participants of providing data in raw format and summary format to their customers?
- b) What information should be required in the summary data format?
- c) Should the NER stipulate a specific period of time in relation to which the electricity consumption data must cover? If so, what is the appropriate period of time?

5.3.2 Time frame to respond to a request for electricity consumption data

The COAG Energy Council has proposed that DNSPs and retailers must respond to a request to provide data within 10 business days.⁵⁸ This time frame was proposed in the power of choice review 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.⁵⁹ That review recommended arrangements for the timely provision of information to customers.⁶⁰

The 10 business day time frame proposed mirrors similar arrangements in the Victorian Energy Retail Code.⁶¹ That time frame was also intended to incorporate any time required for AEMO's processes and protocols to validate the data.

We seek views as to whether a time frame for the provision of data should be stipulated in the NER and what an appropriate time frame should be. We are interested in whether specifying a time frame would enhance transparency without being a disproportionate administrative or regulatory burden on market participants.

Question 5 Time frame to respond to a request for electricity consumption data

- a) Is 10 business days an appropriate time frame for market participants to respond to a request from their customers for their electricity consumption data?

⁵⁷ AEMC 2012, op. cit., p61.

⁵⁸ See proposed rule 7.16(c)(6) of the NER, COAG Energy Council rule change request.

⁵⁹ AEMC 2012, op. cit., p54.

⁶⁰ Note, there are currently no time frames in the NER or NERR.

⁶¹ AEMC 2012, op.cit., p 62. See clause 27.2 of that code. Available at www.esc.vic.gov.au.

5.3.3 Fees payable by a customer

The COAG Energy Council has 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.⁶²

The power of choice review proposed that customers should be able to access their consumption data in the standard format at no cost.⁶³ That review noted that this position is consistent with principles applied under the National Energy Customer Framework (NECF) and current practice by retailers.⁶⁴ In particular, the NERR requires that, at the request of a small customer, a retailer must 'promptly' provide historical billing data for the previous two years without charge.⁶⁵ If a small customer wants billing data for an earlier period or more than once in any 12 month period, then that customer may be subject to a reasonable charge.⁶⁶

In addition, the power of choice review noted that some service providers have been charging significant fees to retrieve a customer's data on behalf of industrial and commercial businesses.⁶⁷

We are interested in stakeholder views on whether the proposed fee arrangements appropriately balance the ability for customers to readily access their data while minimising any costs associated with the provision of this data by market participants. In other words, we are interested in whether the proposed fee arrangements enhance transparency for the benefit of consumers while not imposing a disproportionate administrative or regulatory burden on market participants.

The rule change proposes that electricity consumption data be provided free of charge not more than once over a 'billing period'.⁶⁸ We are interested in views on whether the NERR should specify obtaining the data free of charge once over a defined period (eg once every 3 months) rather than just stating once over a 'billing period'. This is because a 'billing period' can vary depending on the practices of a particular retailer and the type of meter held by a customer (eg monthly billing period, quarterly billing period etc).

As there are proposed changes to the NERR (by the addition of proposed rule 56A and amendments to rule 86 of the NERR), we must also consider whether the proposed rule is compatible with the development and application of consumer protections. As noted

⁶² 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 those applicable rules in the Retail Market Procedures and Chapter 7 of the NER.

⁶³ AEMC 2012, op. cit., p58.

⁶⁴ AEMC 2012, op. cit., p58.

⁶⁵ Rule 28, NERR.

⁶⁶ Rule 28, NERR.

⁶⁷ AEMC 2012, op. cit., p55.

⁶⁸ See proposed rule 56A(2)(a) and 86(4) of the NERR.

in section 4.2.3 (and detailed in Appendix A), we consider that the class of consumer protections relevant to this rule change relates to the provision of information to consumers. Noting this, under proposed rules in 56A and 86 of the NERR, customers can request electricity consumption information free of charge. However, if customers request information more than once per billing period or above the minimum format, then retailers and DNSPs can charge a reasonable fee. We seek views on whether these proposed rules in the NERR are compatible with the development and application of consumer protections relating to the provision of information to consumers.

Question 6 Fees payable by a customer

- a) How often should customers be able to request their energy consumption information free of charge in the NERR?
- b) Are there any other consumer protections we should take into account when assessing this aspect of the rule change request?

5.3.4 Time frame for making and reviewing the data provision guidelines

If a rule is made that requires AEMO to develop and publish data provision guidelines, we seek views as to the date by which AEMO must publish the first set of data provision guidelines.⁶⁹ Also, we seek views as to whether there should be a NER obligation requiring AEMO to review and, if necessary, revise the data provision guidelines. If there is an obligation for AEMO to review and revise the data provision guidelines, how often should such reviews take place?

Question 7 Time frame for making and revising the data provision guidelines

- a) When should the first data provision guidelines be published?
- b) Should there be an obligation review these guidelines? If so, how often should such reviews take place?

5.3.5 Requests from large customers to provide electricity consumption data

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.⁷⁰ We are interested in

⁶⁹ See proposed 7.16(e) and (f) of the NER.

⁷⁰ 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.

views as to whether proposed rule 56A of the NERR should only apply to small customers or to all classes of customers, which would include large customers.

Question 8 Request from large customers to provide electricity consumption data

a) Should proposed rule 56A of the NERR only apply to small customers or should it apply to all customers, which would include large customers?

6 Access by authorised agents or service providers to their customers' electricity consumption data

In this chapter, we describe and discuss the proposal for agents or service providers acting on behalf of customers to request access to their customers' electricity consumption data. We set out consultation questions for stakeholder comment.

6.1 Current issues

In its rule change proposal, the COAG Energy Council stated that it is difficult for customers' agents to obtain electricity consumption data on their customer's behalf.⁷¹

At present, 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.⁷² The customer then forwards this data to their agents. In the case of agents acting on behalf of industrial or commercial business customers, these parties are required to forward a letter of authority from the customer.⁷³

The power of choice review found that these arrangements have limited the ability of customer agents to access data directly from retailers, including when customers change retailers but not the agents acting on their behalf.⁷⁴ The effect of this has been to limit the ability of these agents to provide their customers with potential offers on DSP products.

6.2 Proposed arrangements

The COAG Energy Council has proposed to allow agents or service providers acting on behalf of a customer to obtain access to their customer's electricity consumption data from their customer's retailer or DNSP.⁷⁵ 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.⁷⁶ It would also make the delivery of energy services more efficient.⁷⁷

Stakeholders in the power of choice review were supportive of this proposal conditional on appropriate safeguards being put in place with respect to: informed consent from customers; confidentiality and privacy arrangements; and any

⁷¹ COAG Energy Council, *op. cit.*, p7.

⁷² AEMC 2012, *op. cit.*, p64.

⁷³ AEMC 2012, *op. cit.*, p64.

⁷⁴ AEMC 2012, *op. cit.*, p54.

⁷⁵ Proposed rule 7.7(a)(7) of the NER.

⁷⁶ COAG Energy Council, *op. cit.*, p12.

⁷⁷ COAG Energy Council, *op. cit.*, p12.

accreditations/registrations for third parties where utilising customer data to offer energy management services.⁷⁸

The rule change proposal stated that this change will not place additional costs on retailers or metering data providers given that they would already have to provide this information to their customers.⁷⁹

In assessing the merits of this proposal, we will consider the relative costs and benefits that would arise. A benefit of this proposal is that it could enhance transparency on the part of retailers and distributors by providing a clear right for customers to authorise their agents or service providers to gain access to their electricity consumption data. In turn, this could further stimulate competition in retail and DSP services by making it easier for agents or authorised service providers to provide customers with innovative product offerings.

We will also consider whether this proposal would result in any inefficient costs being borne by retailers or DNSPs, such as any administrative and regulatory costs associated with this proposal.

One of the issues raised by this proposal is what the appropriate term should be to describe such parties in the NER. The proposed rule refers to 'an agent or service provider authorised to act on behalf of a customer'.⁸⁰ We are interested in views as to whether the term a customer's 'agent' is appropriate or whether other words (eg authorised parties) would more aptly capture the relationship between these parties.

Another set of issues relates to whether it is appropriate for the NER to address the nature of the authorisation or consent required to be given by the customer so that agents or authorised parties can access their data. It may be more appropriate for these matters to be addressed by the existing suite of privacy laws rather than being addressed specifically by the NER. 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 agent or service provider to only use the information as permitted by privacy law. In a previous rule change request relating to access to National Metering Identifier (NMI) standing data, the Commission decided not to make specific NER provisions dealing with consent issues that would be more appropriately addressed by general privacy legislation.⁸¹

78 AEMC 2012, op. cit., p64.

79 COAG Energy Council rule change request, p12.

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

81 Australian Energy Market Commission, *Access to NMI standing data*, rule determination, 31 October 2013, Sydney.

Question 9 Access by authorised agents or service providers to their customers' electricity consumption information

a) What is the appropriate term to refer to these third parties (eg agents, authorised parties) in the NER?

b) Beyond existing privacy laws, should the NER specify:

- **the nature of consent a customer must give to authorise a person to access its data; and**
- **any additional privacy obligations on authorised parties, retailers or DNSPs in relation to the disclosure of electricity consumption data?**

7 Informing customers about the uses of electricity consumption data

In this chapter, we describe and discuss the proposal to inform customers about how their electricity consumption data is generally used. Also, we set out consultation questions for stakeholder comment.

7.1 Current issues

As explained in section 2.2.1 of this consultation paper, the COAG Energy Council commissioned a study that found that there is a need for better awareness and customer information about the use of electricity consumption information, particularly in light of services enabled by smart meters.⁸² In addition, the rule change proposal stated that there is legal ambiguity as to whether metering data falls under the definition of 'personal information', which is protected under privacy legislation.⁸³

7.2 Proposed arrangements

In response to these issues, 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.⁸⁴ 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.⁸⁵ This was considered to be consistent with how similar information is provided on personal information under privacy legislation.⁸⁶

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:⁸⁷
 - 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;

⁸² Seed Advisory, op. cit., p8.

⁸³ COAG Energy Council, op. cit., p6.

⁸⁴ COAG Energy Council, op. cit., p6.

⁸⁵ COAG Energy Council, op. cit., p6.

⁸⁶ COAG Energy Council, op. cit., p6.

⁸⁷ Proposed rule 56(1A) and 86(2) of the NERR. See COAG Energy Council, op. cit., p8.

- 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.

We discuss each of the above proposals in detail below.

7.2.1 Information about how electricity consumption data is used on retailer and DNSP websites

The COAG Energy Council has proposed that information be provided on the websites of retailers and DNSPs about how a customer's electricity consumption data is used.⁸⁸ The COAG Energy Council considered that this would give effect to the principle that customers should know how their data obtained from the meter is being used.⁸⁹

In assessing the merits of this proposal, we will consider whether there is a need for the NERR to regulate for the provision of this information. For instance, it may be the case that this information is already provided on the websites of most retailers and DNSPs.

If there is a need for the NERR to regulate for the provision of this information, a possible alternative proposal is that AEMO or the AER could draft a standard explanation of how metering data is used. Retailers and DNSPs could then post this standard explanation on their websites or link their websites to a standard explanation posted on the AER or AEMO's website.

Our assessment will involve a consideration of the benefits of making this information available relative to any costs of this proposal. A potential benefit of providing this information is that it could enhance customer participation by increasing customers' confidence in how their electricity consumption data is used. If customers are provided with this information, this could better enable customers to make more efficient electricity consumption decisions.

However, a possible cost could relate to a disproportionate regulatory and administrative burden falling upon retailers and DNSPs.

More broadly, we will consider whether it is appropriate for energy legislation to be used to effectively extend privacy law. The COAG Energy Council's proposal appears to use the NERR to address potential regulatory 'gaps' resulting from the perceived legal ambiguity as to whether metering data is considered to be 'personal information' for the purposes of privacy legislation.

⁸⁸ COAG Energy Council, *op. cit.*, p8. See proposed rule 56(1A) and 86(2) of the NERR.

⁸⁹ COAG Energy Council, *op. cit.*, p8.

7.2.2 Metering data common terminology guidelines

The COAG Energy Council has also proposed that the AER develop 'metering data common terminology guidelines'.⁹⁰ The purpose of these guidelines is to assist retailers and DNSPs to provide information about how metering data is used by adopting consistent language, which uses agreed definition and common terms.⁹¹ The COAG Energy Council envisages that the guidelines would contain:⁹²

- guidance on which uses of a customer's electricity consumption data will require a retailer or DNSP to seek the customer's consent;
- definition of common terms, including the scope of activities that come under such uses as 'product design', 'billing and settlement' and 'planning purposes';
- an agreed set of words used for the activities of other participants entitled to metering data under the NER (in particular parties who may not have direct contact with customers, namely: AEMO and MDPs); and
- guidance on which third party uses do not need to be included when explaining how data is used (for example, when a customer has authorised a third party to access their data).

The COAG Energy Council envisages that the guidelines would include a template, with retailers and DNSPs being required to use common terms to describe the activities of other market participants. Retailers and DNSPs would also be able to add more information on how they use data – but they would not be able to add more information about how other parties use data as these parties would need to be described based on the common terms. The COAG Energy Council indicated that the information and level of detail required by the guidelines is intended to be consistent with the requirements of a privacy policy under privacy legislation, appropriately tailored to metering data.⁹³

In assessing the merits of this proposal, we will consider whether there is a material need to make these metering data common terminology guidelines. This involves assessing whether there is a significant risk that retailers and DNSPs will use inconsistent terminology that could lead to customer confusion and likely result in inefficient consumption decisions.

We will also evaluate the potential benefits and costs of this proposal. Potential benefits of this proposal could relate to an increase in the transparency of regulatory frameworks because consumers would be better informed about how their electricity consumption data is used.

⁹⁰ COAG Energy Council, *op. cit.*, p2.

⁹¹ Based on additional information provided by the COAG Energy Council.

⁹² Based on additional information provided by the COAG Energy Council.

⁹³ Based on additional information provided by the COAG Energy Council.

Potential costs will include whether a disproportionate regulatory and administrative burden would be imposed on market participants to comply with a template containing common terminology on how electricity consumption data is used. For example, it may be practically challenging for retailers and DNSPs to use a common set of terms and templates to describe a diverse range of their business operations. We will also consider the administrative costs falling upon the AER to develop these guidelines.

7.2.3 Consumer protections

As this proposal concerns the NERR (through proposed rule 56(1A) and proposed rule 86(2) of the NERR), we are also interested in views about whether the proposal is compatible with the development and application of consumer protections.⁹⁴ We have identified that the relevant class of consumer protections are those relating to the provision of information to consumers.⁹⁵

Question 10 Informing customers about the uses of their electricity consumption data

- a) Is there a significant risk or problem in the NEM that necessitates the publication of standard information on the websites of retailers and DNSPs about how electricity consumption data is used? What are the benefits associated with this proposal? Are there examples where a similar approach has been applied in other industries?**
- b) Is it appropriate for energy-specific regulations to be used to extend privacy law by requiring information about how electricity consumption data is used to be published on the websites of retailers and DNSPs?**
- c) Is there a significant risk or problem in the NEM that would require the creation of 'metering data common terminology guidelines' ? What are the benefits associated with this proposal? Are there examples where a similar approach has been applied in other industries?**
- d) Are there any other consumer protections we should also take into account?**

⁹⁴ See section 4.2.2 of this paper.

⁹⁵ Refer to section 4.2.3 and Appendix A of this paper.

8 Lodging a submission

The Commission has published a notice under section 95 of the NEL and section 251 of the NERL for this rule change request inviting written submissions. Submissions are to be lodged online or by mail by 5 June 2014 in accordance with the following requirements.

Where practicable, submissions should be prepared in accordance with the Commission's Guidelines for making written submissions on rule change requests.⁹⁶ The Commission publishes all submissions on its website, subject to a claim of confidentiality.

All enquiries on this project should be addressed to Marc Tutaan on (02) 8296 7800.

8.1 Lodging a submission electronically

Electronic submissions must be lodged online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code ["ERC0171"]. The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

Upon receipt of the electronic submission, the Commission will issue a confirmation email. If this confirmation email is not received within 3 business days, it is the submitter's responsibility to ensure the submission has been delivered successfully.

8.2 Lodging a submission by mail

The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated. The submission should be sent by mail to:

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Or by Fax to (02) 8296 7899.

The envelope must be clearly marked with the project reference code: ERC0171.

Except in circumstances where the submission has been received electronically, upon receipt of the hardcopy submission the Commission will issue a confirmation letter.

If this confirmation letter is not received within 3 business days, it is the submitter's responsibility to ensure successful delivery of the submission has occurred.

⁹⁶ This guideline is available on the Commission's website.

Abbreviations

ACL	Australian Consumer Law
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
DNSP	distribution network service provider
DSP	demand side participation
HAN	Home Area Network
IHD	In Home Display
MDP	Metering Data Provider
MSATS	Market Settlement and Transfer Solutions
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
NMI	National Metering Identifier

A Electricity consumption data and types of meters

This Appendix provides further information about electricity consumption data and types of meters.

A.1 Electricity consumption data

This rule change is about access to electricity consumption data. For the purposes of this rule change, access to electricity consumption data is a collective term we have used to refer to access to 'metering data' and settlements ready data' as defined in the NER. The NER also refers to energy data but access to energy data is not directly addressed by this rule change.⁹⁷

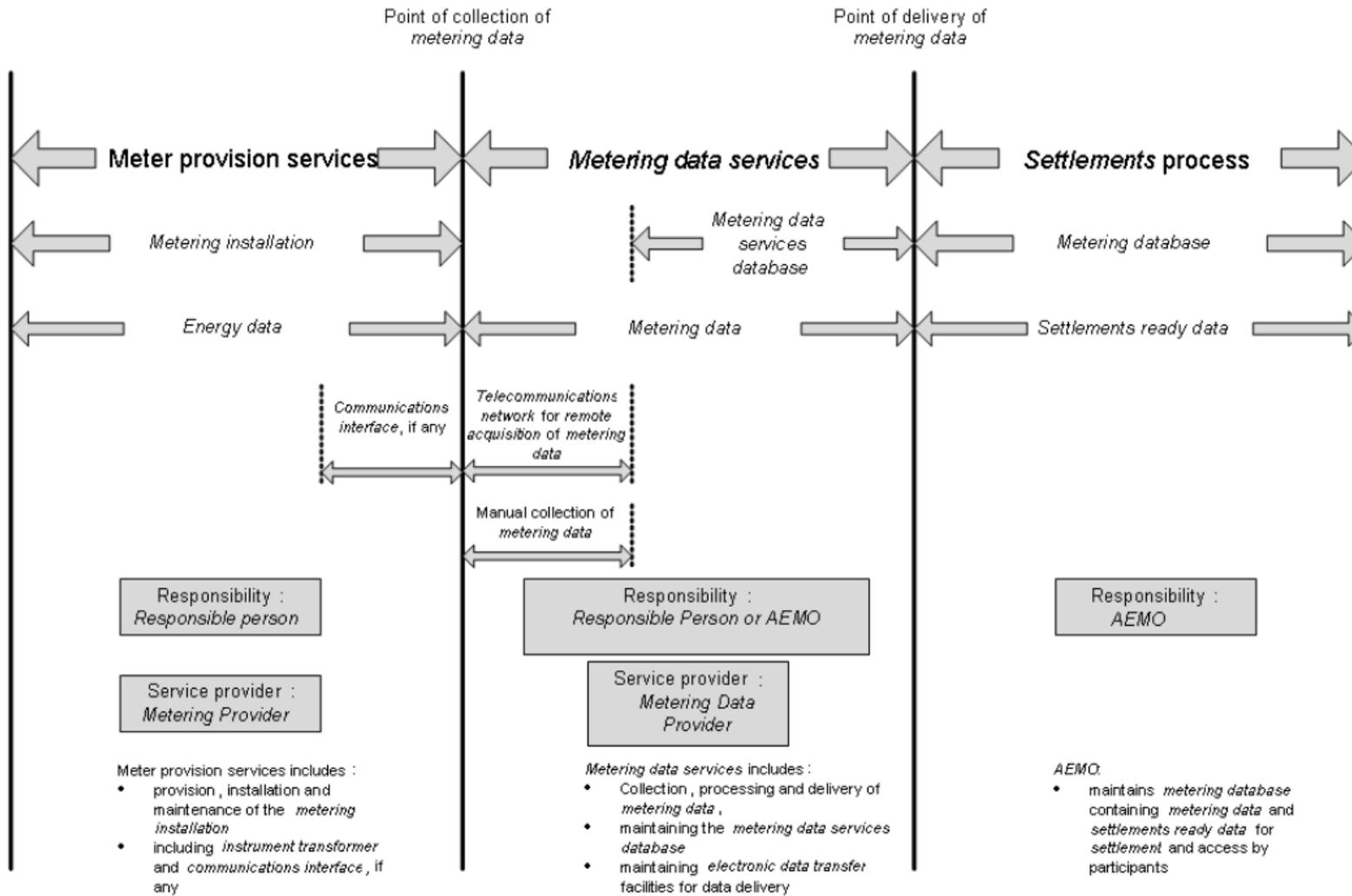
The terms used in the NER to describe the data that is sourced from a meter changes depending on when that data is measured or processed:

- Energy data - refers to data recorded by a meter without any processing of the data. Energy data is extracted from accumulation, interval or smart meters (see A.2 below).
- Metering data - refers to energy data that has been collected and processed by a metering data provider and stored in a metering data services database.
- Settlements ready data - refers to metering data that has been collected and validated by AEMO for the purposes of settlements and billing and stored in the metering database, which is part of MSATS.

Energy data, metering data and settlements ready data are defined terms under chapter 7 of the NER. Schedule 7.1 of the NER represents the relationships between these types of data schematically. This is set out in Figure A.1 below.

⁹⁷ If customers have a smart meter, they can get access to their energy data (or, in other words 'instantaneous data') from their retailer via a Home Area Network (HAN) or an In Home Display (IHD).

Figure A.1 Schedule 7.1 of the NER outlining data collection and processing in the NEM



A.2 Types of meters

The source of electricity consumption data is from energy data obtained from a meter. The types of meters are:⁹⁸

- Accumulation meters – record electricity used on an accumulation basis. Consumption data is retrieved manually from the meter at a consumer’s premises periodically (typically every three months to match the retailer billing cycle). This data provides consumers with their total historical electricity consumption (in kWh) but does not record the timing of energy use (ie when electricity is used).
- Interval meters – record consumption on a near real time interval basis (every half hour). These meters provide consumers with historical information about the timing of their consumption. These meters can be read manually at the premises, or remotely via a communications link.
- Smart meters – record consumption on a near real time interval basis (every half hour) and have communication technology that allows this data to be retrieved remotely. Depending on its functionality, a smart meter can provide other services, including network support functions such as load control, and can link to other devices at the premises (eg home area networks and in-home displays) to provide the consumer with instant access to their electricity use profile.

⁹⁸ AEMC, op. cit., p53.

B Consumer protections

This Appendix provides further information about the consumer protections relevant to this rule change request.

Figure B.1 Consumer protections table

NSW	ACT	SA	Tasmania	Victoria	Queensland
AUSTRALIAN CONSUMER LAW (ACL)¹					
<p>The ACL is a single national consumer law that replaces a number of existing national, state and territory laws.</p> <p>Consumer protections in the ACL which will be relevant include:</p> <ul style="list-style-type: none"> the prohibition against misleading and deceptive conduct generally the prohibition against misleading and deceptive conduct in relation to goods or services 					
<p>NATIONAL ENERGY RETAIL LAW(NERL)²</p> <p>The NERL provides for a national framework for distribution and retail regulation.</p> <p>Consumer protections in the NERL which will be relevant include:</p> <ul style="list-style-type: none"> standard retail contracts are to be consistent with model terms and conditions market retail contracts are to be consistent with minimum requirements set out in the NERR the requirement for explicit informed consent on entry by a customer into a market retailer contract (deemed) standard connection contracts are to be consistent with model terms and conditions 				<p><i>Electricity Industry Act 2000 (Vic) (EIA (Vic))</i></p> <p>This Act provides for terms and conditions for contracts with small customers. Retailers and distributors are required to comply relevant codes, which include the <i>Electricity Retail Code & Electricity Distribution Code</i></p>	<p><i>Electricity Act 1994 (Qld) (EA(Qld))</i></p> <p>This Act provides for terms and conditions relevant to standard and negotiated contracts. Retailers and distributors are required to comply with relevant codes, which include the <i>Electricity Industry Code</i></p>
<p>NATIONAL ENERGY RETAIL RULES (NERR)</p> <p>Consumer protections in the NERR which will be relevant include:</p> <ul style="list-style-type: none"> retailer obligation to provide historical billing information terms and conditions for standard retail and connection contracts which allow a consumer to request historical billing information or consumption information respectively provision of information requirements imposed on retailers requirements to make average daily consumption information available on a bill provisions regarding estimation as a basis for bills and obligations underlying how the estimation was calculated 				<p><i>Electricity Retail Code Vic ((ERC Vic)</i></p> <p>The <i>Electricity Retail Code & Electricity Distribution Code</i> require certain consumption information to be made available to consumers</p>	<p><i>Electricity Industry Code Qld (EIC Qld)</i></p> <p>The <i>Electricity Industry Code</i> requires certain consumption information to be made available to consumers</p>
No relevant modifications	No relevant modifications	No relevant modifications	No relevant modifications		

¹ The ACL is applied in each of the NEM jurisdictions as a law of that State or Territory by each of *Fair Trading Act 1987 (NSW)* (section 28), *Fair Trading Act 1992 (ACT)* (section 7), *Fair Trading Act 1987 (SA)* (section 14), *Australian Consumer Law (Tasmania) Act 2010* (section 6), *Fair Trading Act 1989 (Qld)* (section 16), *Australian Consumer Law & Fair Trading Act 2012 (Vic)* (section 8)

² The NERL has been applied in NSW, ACT, SA and Tasmania as a law of that State or Territory: *National Energy Retail Law (NSW) Act 2013*, *National Energy Retail Law (ACT) Act 2012*, *National Energy Retail Law (SA) Act 2012*, *National Energy Retail Law (Tas) 2012*

OVERVIEW OF RELEVANT CUSTOMER PROTECTIONS

General prohibition against misleading and deceptive conduct (the ACL)

The Australian Consumer Law (ACL) contains both a broad norm of conduct prohibiting a person, in trade or commerce, from engaging in misleading or deceptive conduct,⁹⁹ as well as a more specific norm, prohibiting a person from making false or misleading representations in connection with the supply, possible supply or promotion of goods or services.¹⁰⁰

As norms of conduct, it will allow persons to seek remedies for harm caused by breaches of that norm, rather than give rise to a contravention that attracts punitive sanctions. Remedies that are available for contravention of this section include injunctions, damages and compensatory orders.

These protections provide context for the more specific protections discussed further below.

Contractual requirements to make historical billing and consumption information available (NERL and NERR)

Retailers

Retailers are required to make standing offers to consumers consistent with the model terms and conditions set out in the NERR.¹⁰¹ They are also required to ensure that market retail contracts are to be consistent with minimum requirements set out in the NERR.¹⁰²

Rule 28 obliges a retailer, on request from a small customer, to provide historical billing information for a 2 year period, without charge. A charge can be imposed where the request is for information exceeding a 2 year period, or where the information has been made available in the preceding 12 months.¹⁰³ The rule applies to both standard and market retail contracts and is reflected in the model terms and conditions of a standard retail contract.¹⁰⁴

Retailers must also obtain the explicit informed consent of a customer before entering a market retail contract.¹⁰⁵ This requires full and adequate disclosure of all matters

⁹⁹ Section 18 of the ACL.

¹⁰⁰ Section 29 of the ACL.

¹⁰¹ Section 25(2) of the NERL. The model term and conditions can be altered but the scope for alternation is limited. Section 25(3)-(5) of the NERL.

¹⁰² Section 34 of the NERL generally.

¹⁰³ The position is identical in Queensland: clause 4.9.8, *Electricity Industry Code*. The position is largely identical in Victoria: clause 27.2, *Electricity Retail Code*, though the obligations extend to the provision of metering data retained by the retailer. The information can also be sought even after retailers have been switched and must be provided within a 10 business day time frame.

¹⁰⁴ NERR, Schedule 1, clause 9.4.

¹⁰⁵ See generally sections 38-42 of the NERL.

relevant to the consent of a customer, and can often include an overview of the terms of the contract.

DNSPs

Rule 86 obliges a distributor, on request from a customer or a customer's retailer, to provide information on energy consumption or charges for connection services, without charge. A charge can be imposed where the request for the information is made more than once a year.¹⁰⁶ This is reflected in the model terms and conditions for a deemed standard connection contract, which terms and conditions must be adopted by a distributor.¹⁰⁷

Provision of information requirements (NERR)

Rule 56 requires retailers to make other information available to small customers, including information regarding the retailer's standard complaints and dispute resolution procedures and contact details for an energy ombudsman.¹⁰⁸

Requirements to include consumption information on a bill (NERR)

The NERR outlines what must be included in a small customer's bill. Relevantly, this will include:

- average daily consumption information during the billing period;
- if a bill was issued by the same retailer for the corresponding billing period during the previous year, particulars of the average daily consumption during that previous billing period; and
- details of consumption or estimated consumption of energy.¹⁰⁹

If the bill is based on estimation, the bill must also reflect it has been based on estimation.¹¹⁰ Where an estimate is permitted to be used as the basis of a small customer's bill, the estimation may be based on historical metering data.¹¹¹ The rule applies to both standard and market retail contracts and is reflected in the model terms and conditions of a standard retail contract.¹¹²

¹⁰⁶ The position is identical in Queensland: clause 3.2.1, *Electricity Industry Code*. There are no mirror provisions in the Victorian *Electricity Distribution Code*. Victorian distributors do have obligations to provide information in relation the quality and reliability of supply: clauses 9.1.5 and 9.1.6.

¹⁰⁷ The model term and conditions can be altered but the scope for alternation is limited.

¹⁰⁸ Similar information requirements are imposed on retailers in Queensland: clause 4.5.1, *Electricity Industry Code* and in Victoria clause 26.2, *Electricity Retail Code*.

¹⁰⁹ Rule 25(k)(l) and (n). The position is identical in Victoria: clause 4.4 *Electricity Retail Code* and Queensland clause 4.9.7, *Electricity Industry Code*

¹¹⁰ Rule 21(3). The position is identical in Victoria: clause 4.2(e) and clause 5.2, *Electricity Retail Code* and Queensland clauses 4.9.7 and 4.10.2, *Electricity Industry Code*

¹¹¹ Rule 21(2)(b).

¹¹² NERR, Schedule 1, clause 9.3.