

Mr John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Submitted via www.aemc.gov.au

29 May 2014

Dear Mr Pierce,

Submission on the expanding competition in metering and related services rule change request (ERC0169)

EnerNOC is grateful for the opportunity to comment on this rule change request.

EnerNOC is an energy management company, currently managing over 24 GW of load sourced from over 14,000 commercial and industrial sites across markets in North America, Europe, Australia, New Zealand, and Japan. As well as offering much of this load into energy, capacity, and ancillary services markets of varied designs, we also assist customers in improving their efficiency and minimising their spending on energy.

1 General comments

We support increased competition in the provision of metering services. We believe that, if implemented correctly, this could foster innovation and improved efficiency. However, we have serious reservations about the potential for retailers to use their influence over Metering Coordinators to stifle the development of new services which depend on access to the meter or data from it. The competitive pressures to counteract this desire are likely to be weak.

For this reason, we do not believe it is appropriate to allow an unregulated free-for-all: too much harm could be done. The issues that need particular attention are exit fees and discriminatory pricing.

2 Responses to consultation questions

Our answers to the relevant questions in the consultation paper are below:

Q1 Q1: Are there any additional criteria that should be considered in assessing this rule change request?

No.

Q2 What are the benefits for competition by allowing any registered and accredited party to take on the Metering Coordinator role?

It could increase competitive pressure in the metering business, hopefully leading to lower costs for consumers. It could also make it easier for innovative metering services to be introduced. However, to achieve these benefits, it is essential that precautions are taken to avoid anticompetitive activity.

Q3 Are there alternatives that are preferable to creating a separate Metering Coordinator role? For example, would it be appropriate to combine the proposed Metering Coordinator responsibilities with the existing Metering Provider role? If so, what advantages would this alternative deliver?

A separate Metering Coordinator role is preferable, because there is no need to bundle the physical meter provision services with the coordination services. It is better to avoid unnecessary bundling, so as to increase competitive pressure for each element.

Q4 If established, should the new Metering Coordinator role be classified as Registered Participant under the NER or should other arrangements be put in place? If so, what accreditations may be required?

Yes, the Metering Coordinator should be a Registered Participant.

Q9 What information and consent requirements would be appropriate under the competitive model for provision of metering and related services?

The proposed information and consent requirements make sense, but particular care must be taken around exit fees and contract durations, to avoid stifling competition.

In particular, if Metering Coordinators are allowed to charge discriminatory prices, refuse access to accredited parties, or charge arbitrarily high fees – well above costs – for the kinds of services sought by third parties, this will act as a barrier to competition and to the provision of new services.

Ideally, consumers would fully understand the implications of such behaviour before allowing a Metering Coordinator to be appointed. In practice, few consumers are likely to understand the full implications in advance, and they are unlikely to know what services they would like to take up in future, and whether a particular Metering Coordinator is likely to frustrate the use of such services.

The only realistic remedy for consumers in this situation is for them to be able to move to a different Metering Coordinator that does not impose such barriers. Long contract durations and high exit fees would undermine this remedy.

Q10 Should opt-in / opt-out provisions apply where a party seeks to upgrade a consumer's metering installation to achieve business operational efficiencies that may lead to reduced costs for consumers?

Not if it makes no difference to the services available to the consumer, the costs charged to the consumer, or any contract durations or exit fees that would be borne by the consumer or by any other party with which the consumer may wish to contract (e.g. a new retailer, or a third party).

Q11 Should retailers be required to inform consumers of their metering services charges? If so, what is an appropriate means for retailers to fulfil this obligation?

Yes. They should be disclosed wherever the prices are discussed, including on bills.

Q12 Should the relationship between the retailer and the Metering Coordinator be based on a commercial arrangement? If not, what alternatives should be considered? What are considered the costs and benefits of a standard contract for this relationship?

The courageous recommendation in the *Framework for open access and common communication standards* not to regulate access to or charges for smart meter services was dependent on the assumption that there would be a high level of competitive pressure on Metering Coordinators, including those that are owned by retailers.

The final determination cautioned that “there appear to be incentives for retailers to take on the role of Metering Coordinator, as this would provide a means to frustrate the ability of other market participants to offer competitive rival services”¹, and that even where the retailer is not the Metering Coordinator, the retailer would have “an incentive to argue for a type of exclusivity agreement with the Metering Coordinator whereby the retailer receives more favourable access than its competitors”² and that “the retailer may succeed in hindering the development of competition in energy services by frustrating its competitor's access to a smart meter.”³

These serious concerns about access to smart meter services also apply to services for non-“smart” Type 1-4 meters, and will undoubtedly arise with as-yet-uncontemplated services.

¹ AEMC, *Framework for open access and common communication standards*, Final Report, March 2014, p.35.

² *Loc. cit.*

³ *Ibid.*, p.36.

A requirement for Metering Coordinators to use standard contracts and non-discriminatory pricing would help avoid these problems, as well as reducing the need for meter churn when a customer changes retailers.

Particular attention should be paid to contract durations and exit charges. It is not reasonable for a retailer to be able to enter into an agreement with a Metering Coordinator which leads to the customer or a new retailer incurring significant charges. This would be a way of increasing “lock in” to retail contracts, as well as stifling the development of new services which depend on meter access.

Q13 Should residential and small business consumers be able to exercise a right to appoint their own Metering Coordinator? If so, what arrangements would need to be put in place to govern that relationship?

Yes, it is essential that they are able to do so, so as to provide competitive pressure and to allow for innovation.

The commission is right to draw attention to the possibility of retailers locking customers in to a particular Metering Coordinator, either through terms in their retail contract, or by making discounted energy services prices conditional upon the continued use of that Metering Coordinator.⁴ Such a practice could indeed have a serious effect on competition and innovation. The most straightforward way to address this would be to prohibit such bundling.

I would be happy to provide further detail on these comments, if that would be helpful.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Paul Troughton', with a long horizontal flourish extending to the right.

Dr Paul Troughton
Director of Regulatory Affairs

⁴ Page 47 of the Consultation Paper.