

1 October 2015

Mr John Pierce
Chairman
Australian Energy Market Commission
Level 5, 201 Elizabeth Street
Sydney NSW 2000

Dear Mr Pierce

The NSW DNSP's Submission to the *Additional Consultation on Specific Issues – Expanding Competition in Metering and Related Services Rule 2015*

The NSW Distribution Network Service Providers, Ausgrid, Endeavour Energy and Essential Energy (the NSW DNSPs) welcome the opportunity to provide this joint submission in response to the *Additional Consultation on Specific Issues – Expanding Competition in Metering and Related Services Rule 2015*.

We recognise the substantial amount of work and industry consultation that has been undertaken by the AEMC in developing the draft rules and draft determination. As this is one of the most fundamental rule changes to be considered in recent years, it is important that it results in a workable framework for all market participants.

NSW DNSP's position on the *Expanding Competition in Metering and Related Services Rule 2015*

The NSW DNSPs recently supported a 10 September 2015 letter sent by the Energy Networks Association (ENA) on behalf of the Chief Executives of Australia's electricity distribution networks which raised concerns about potential design flaws and market power issues associated with the *Expanding Competition in Metering and Related Services* rule change. To this end, we draw the AEMC's attention to the issues raised in the NSW DNSP's 21 July 2015 submission to the draft rules and draft determination as the basis for addressing a number of these concerns. We would like to reinforce that it is critical that the increased competition in metering and related services framework:

- Maintain existing metering enabled network and access control functions and services.
- Avoid the potential for the Metering Coordinator (MC) to exert market power over current and future network services.
- Allow DNSPs to deploy advanced metering functionality for the provision of network services.
- Ensure appropriate compensation for stranded assets.
- Consider DNSP obligations under the National Energy Customer Framework (NECF).
- Accommodate the Accredited Service Provider (ASP) scheme in NSW.

NSW DNSP's position on the *Additional Consultation Paper*

We note that this additional consultation paper relates to number of issues, however without the benefit of actual drafting for all issues or access to the full set of rules it is difficult to fully comment. Nevertheless, we offer comments on the issues raised in the *Additional Consultation Paper* in Attachment A.

Next Steps

The NSW DNSPs believe it is critical that industry have a further opportunity to review the **complete** draft final rules at least two weeks before the final determination is made. While this would be tight from a timing perspective, it would lessen the need for any industry-led rule change proposals on these issues following the final determination.

If you have any further queries or would like to arrange a meeting to discuss our submission please contact Mr Murray Chandler, Group Manager Network Technology & Innovation at Networks NSW on (02) 9269 7210 or murray.chandler@ausgrid.com.au

Yours sincerely,



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Attachment A: NSW DNSP's comments on the issues raised in the Additional Consultation Paper
Attachment B: The need for light handed regulation – Access to network services

Attachment A: NSW DNSP's comments on the issues raised in the Additional Consultation Paper

Network devices

We are very concerned that while accepting the need to enable networks to use network devices “for purposes that support the safe, secure and reliable operation of the network”, the AEMC also states that:

*The Commission's view is that the **primary purpose of a metering installation is to house a meter for billing and settlement of the customer's electricity consumption**. A functional, accurate meter is vital to the operation of the NEM. Therefore **if there is insufficient space** on a meter board to house both a meter and a network device, **the meter should have priority**. The proposed amendments set out below are intended to reflect this position. (p.22)*

We believe that this gives significant discretion to the MC and could be used to arbitrarily remove network devices without any obligation regarding rectification requirements where demonstrated to be inappropriate. Also, even where exercised appropriately, such a provision will remove any of the bargaining power that the distributor has in terms of an option to bypass the MC service – noting that this was the main AEMC argument against regulation of price/access for services to DNSPs. On this critical issue, the NSW DNSPs provided a comprehensive response on the need for light handed regulation for access to network services which we reproduce in Attachment B to this submission.

Supply interruptions for the purpose of installing or maintaining a meter

We note that the draft rules provided in this consultation maintains draft rule 91A of the National Energy Retail Rules (NERR). This rule is designed to replicate the processes in rules 90 and 91 of the NER which impose notification obligations on DNSPs to inform customers on planned and unplanned interruptions within certain timeframe. It also imposes obligations on the MC and the DNSP to provide reasonable assistance to each other to meet their respective obligations. However, in doing so, it allows the MC to require the DNSP to effect an interruption.

From a NSW perspective this draft rule has two main flaws. It imposes obligations on DNSPs with respect to work that is routinely carried out in NSW by Level 2 Accredited Service Providers (ASP) (who carry out all tasks involved in installing a new meter including the required isolation work¹). It also requires the DNSP to notify the customer of interruptions initiated by the MC. We submit that the following changes to the NER and NERR are required to clearly separate the role of the DNSP and the MC:

- (a) Provide the MC with the right to interrupt supply for the purpose of the installation, maintenance, repair or replacement of metering equipment to exist in parallel with the DNSP's right to interrupt supply under rule 89 of the NERR;
- (b) Impose notification and rectification obligations akin to those which DNSPs have in rules 90 and 91 on metering coordinators with respect to their right to interrupt supply;
- (c) Delete proposed rule 91A of the NERR; and
- (d) Amend rule 7.3.2(h)(3) to add a new exception 'where such disconnection or reconnection is undertaken pursuant to the metering coordinator's right to interrupt supply under the Rules.

The NSW DNSPs would also like to alert the AEMC to the fact that there is a high proportion of multiple occupancy residences that do not have individual isolation in the form of an individual service fuse or circuit breaker upstream of the meter in built-up areas in NSW (such as Sydney). This means that the LNSP is likely to be called in to effect the disruption for all premises (apartments) connected to that circuit breaker, requiring individual supply disruption notices even though the meter install by the retailer or MC is for an individual premise/apartment.

¹ Further we note that any arrangement where the DNSP provides the isolation for an MC undertaking this work would be extremely difficult logistically to align the notification time, the isolation, the metering work (which is a short duration) and then restoration of the isolation. This would either result in a very extended outage with a DNSP staff member isolates well in advance, leaves site and then returns at a later time or would require a DNSP staff member to follow the MC installer around, effectively doubling the cost of any rollout.

We submit that the AEMC should provide some commentary on this issue for the LNSP to be able to achieve full cost recovery for performing the isolation and notification requirements. This will signal to the AER the need for the approval of a new ancillary service fee in future regulatory periods for the affected LNSP.

Arrangements for accessing energy and metering data

The NSW DNSPs consider the manner and the terms and conditions of access to this service for network billing purposes should be excluded from the commercial negotiation framework. Instead they should be regulated in the rules or a relevant B2B procedure. We note that the AEMC has indicated that its policy intent is that such data be provided without cost to DNSPs as required for efficient market operation. However, the excerpts of the draft Rules do not indicate the enactment of this policy intent and we have previously raised concerns with draft rule clause 7.6.1(b) which appears to allow the MC to provide access on commercially agreed terms and conditions.

This is a key revenue risk if an MC seeks to impose unreasonable terms or conditions on the provision of such information. While a DNSP maintains the right to install a network device under clause 7.8.6 this would be an inefficient outcome for customers if used for this purpose, where the data required is already available. We request that the AEMC ensure that its policy intent is realised in the final rules.

Alterations to type 5 and 6 metering installation to make them capable of remote acquisition.

The NSW DNSPs support the policy position that allows alteration to type 5 and 6 metering installations to make them capable of remote acquisition in the scenarios of operational difficulties or where the primary purpose is network obligations to provide a safe, secure and reliable network as determined by the LNSP, acting reasonably. However, while we agree with this policy position we cannot fully comment due to the absence of any drafting provided. We would suggest though that operational difficulties should not reference 'hazardous materials' but rather be more general, for example 'where access to the installation is deemed hazardous'.

Customer consent for provision of network-related services

The NSW DNSPs agree with the policy position that customer consent should not be required for network services although we cannot fully comment due to the absence of any drafting provided.

Metering Coordinator obligations where a customer refuses to have an advanced meter installed

The NSW DNSPs have no objection to a clarification in the Rules that an MC is not in breach of the Rules if it installs a type 4A meter where a customer refuses the installation of a type 4 meter that meets the minimum services specification. However, from a customer's point of view, if the meter is going to operate as (essentially) a manually read interval meter, the customer may be disadvantaged if it is obligated to contribute to the cost (implicitly or explicitly) of a more expensive 4A meter for services it is not going to receive.

Application to the framework to connection transmission points

The NSW DNSPs agree that only the LNSP or FRMP at a transmission connection point can be appointed as the MC at that connection point.

Attachment B – The need for light handed regulation – Access to network services

The NSW DNSPs note that there is no obligation in the draft rules to compel MCs to provide DNSPs with access to network services provided by advanced meters. Instead, the draft rules enable certain third parties including DNSPs to enter into un-regulated commercial arrangements with MC to obtain those services. We understand that this reflects a deliberate decision by the AEMC not to impose any regulatory framework on the provision of advanced metering services.

This appears to be based in part on the AEMC's view that the market for metering services will not have natural monopoly characteristics². Furthermore, the AEMC accepted arguments from metering businesses that various forms of access or price oversight, such as a negotiate/arbitrate regime, could discourage commercial negotiation, be a disincentive to become a MC by introducing uncertainty, and/or create an investment risk and delay the development of the market³.

Notwithstanding that this position could be detrimental to end use customers if an agreement cannot be reached between the DNSP and MC for controlled load services as the DNSP may have no option but to not allow the customer to have the tariff. Our stated position in previous submissions is that light handed regulation is appropriate for basic meter services⁴ (as distinct from new advanced smart meter functionality) and it is likely to better contribute to the achievement of the NEO than if these services were unregulated.

This is because the NEO establishes objectives that include efficient investment in the networks and operations, including security and reliability of supply. Accordingly, we submit that primary and secondary smart meter functionality, which includes functionality that would otherwise be utilised for efficient network operation and greater security for customers (including life support customers), would adversely impact on these objectives if left unregulated and subject to commercial negotiation only.

Under this arrangement there is the potential for DNSPs to become “price takers” if they were to retain existing network services (including load control where integrated into an existing meter), when a network meter is churned.

This is because most network services (such as direct load control) which are currently provided through existing metering installations under the proposed AEMC arrangements would only be activated in an advanced metering system following successful negotiation of commercial terms, however, the DNSP will have no opportunity to select an alternate provider of these services placing it in a relatively weak negotiating position.

The NSW DNSPs acknowledge that it is possible for DNSPs to have some counter-veiling market power if they are able to by-pass the meter to obtain access to the network service (which the AEMC has indicated will be a feature of the metering rule change). However, we note that this is only likely to be a credible option where the DNSP is seeking to retain existing network services, and there is ability for the DNSP to use its asset rather than paying the new provider for the service. Further, in some circumstances it may be more efficient to continue to use a separate network device, for example an existing ripple control receiver for which the costs have already been sunk or future low cost monitoring devices that might be cheaper or more fit for purpose than inclusion of such functionality within a meter.

Moreover, we disagree with the AEMC that because DNSPs are the only potential party interested in these services, it would incentivise MCs to negotiate with DNSPs and provide services at reasonable cost – we cite the New Zealand metering environment where we understand no such agreements have been entered into between metering businesses and networks. The fact that those jurisdictions with a competitive metering market have comparatively few or no voluntary arrangements between MCs and DNSPs suggests an unregulated structure does not promote the supply of metering services to DNSPs.

² AEMC 2015, Expanding competition in metering and related services, Draft Rule Determination, 26 March 2015, Sydney pg. 273

³ Ibid, pp 273-275.

⁴ We note that in AEMO's Minimum Functionality of Advanced Meters – Advice to COAG Energy Council November 2014 it classifies services previously recommended by the NSW DNSPs as basic meter services, as a mixture of primary and secondary services and advanced smart meter functionality as value-added services.

The provision of metering services to DNSPs by a MC is in the long-term interests of consumers of electricity. In the absence of effective competition for the provision of advanced metering services, the AEMC's approach of a wait of three years for proof of market failure is not in the long-term interests of consumers. It is appropriate to have some form of light-handed regulation at the commencement of the rules.

Metering is already a highly regulated activity. It is unlikely that the existence of a negotiate/arbitrate regime, price monitoring or even an obligation to negotiate in good faith would be sufficient on their own to deter an established metering business from entering the market.

Furthermore, the Chapter 8 dispute resolution procedure could easily be amended to include disputes between MCs and DNSPs under r 7.6.1(b) (for example by inserting an obligation to negotiate in good faith). The procedure is well understood by market participants and its existence has not seen a proliferation of access disputes or regulatory gaming over the years. It gives primacy to commercial negotiations between the parties with a back-up mechanism of resolving disputes should they arise.

This would be pro-competitive regulation designed to facilitate the transition of metering services into a competitive market. This is additionally important as the option for small consumers to engage their own MC is not included in the core arrangements of the metering rule change at this time. The AEMC has previously stated in its *Framework for open access and communications review final report*⁵ that:

“If the competition in metering rule change request determines, for instance, that only retailers can appoint the MC, or determines not to implement the separate MC role, then the competitive discipline provided by a consumer's ability to choose would be removed. In this case, we consider that a form of light-handed regulation to govern access negotiations for all parties should be considered as part of the competition in metering rule change request. This might take the form of:

- a set of high level negotiation principles in the NER that guide the commercial negotiations for access and access charges to smart meter functionality; and
- an appropriate dispute resolution process, such as that in Chapter 6 or Chapter 8 of the NER, be applied to resolve disputes.”

As a result, the NSW DNSPs consider that there is a need for light handed regulation of basic meter services functionality due to:

- the potential for market power imbalances to develop under the proposed meter contestability framework;
- uncertainty regarding DNSPs ability to negotiate access on competitive terms;
- the lack of voluntary arrangements in other jurisdictions and
- the need for DNSPs to retain existing network functions and enforce this approach.

Network regulatory arrangements and access to MC services

Notwithstanding the above, given that the AEMC is in part relying on a DNSP's ability to bypass a MC as a means of constraining its market power, there is considerable scope to amend the draft rules to ensure that where relevant, the DNSP's option of bypass of a MC by using its own network device is effective.

The definition of 'network device' is extremely broad in the sense that the apparatus or equipment *may include* circuit breakers and control equipment, which *may be* housed within a facility that was previously used by the LNSP as a metering installation. The examples are not exclusive, and could potentially capture a wide range of equipment which is associated with the provision or monitoring of a DNSP distribution service.

⁵ AEMC 2014, Framework for open access and common communication standards, Report, 31 March 2014, Sydney, p 41.

This is complicated by rule 7.8.6 repeatedly referring to an LNSP installing a network device (see r.7.8.6(a), (b)(1) and (b)(2)). However, the obligation on MCs in r7.8.6(b)(2) not to remove, damage or render inoperable a network device is one which must clearly apply to existing network devices as well as those installed by an LNSP pursuant to r7.8.6. We submit those rights and obligations are not clear and provide scope for the MC to refuse to allow the DNSP to carry out its planned activities or to provide the DNSP with any assistance requested.

In order to ensure the DNSPs option of bypass is a real one the draft rules need to clarify:

- (a) that the new definition of 'network device' applies to existing infrastructure at connection points at the time the rule is adopted not just newly installed devices;
- (b) that the DNSP can use a network device in connection with the 'operation, monitoring or **control** of the network' subject to the limitation regarding remote disconnection and reconnection;
- (c) that the DNSP can use a network device to disconnect or reconnect part of a customer installation (such as the hot water) despite the prohibition on the use of a network device to reconnect or disconnect a metering installation in r7.8.6(c)(2);
- (d) that the DNSP does not require the metering coordinator's consent to install or utilise a network device at a connection point for which the metering coordinator is responsible;
- (e) that a metering coordinator's obligation to provide all reasonable assistance to facilitate the installation of a network device in r 7.8.6(b)(1) includes providing temporary isolation of the metering installation;
- (f) the time periods within which a metering coordinator must provide reasonable assistance to a DNSP to install a network device to prevent the metering coordinator from delaying the process;
- (g) whether the metering coordinator is able to charge the DNSP for any 'reasonable assistance' provided.

The drafting suggestions above are proposed to clarify the respective rights and obligations of DNSPs and MCs. It is certainly arguable, that a DNSP is able to undertake the activities specified in sub-paragraphs (b), (c) and (d), and that a MC must provide the electrical isolation outlined in sub-paragraph (e). However, those rights and obligations are not clear and provide scope for the MC to refuse to allow the DNSP to carry out its planned activities or to provide the DNSP with any assistance requested.

If the AEMC envisages that the MC is able to charge the DNSP then the draft rules should contain some constraint on the level of those charges to avoid the risk of the fees being so high as to act as a barrier to a DNSP exercising the bypass option.

Further related access issues

Further questions may arise regarding network devices depending on whether the DNSP needs to access the metering installation to install a network device. Rule 7.8.6 provides that a network device is to be installed 'at or adjacent to a *metering installation*.'

The draft rule provides that installation and maintenance of metering installations must be carried out only by a metering provider (r7.8.1(c)). The MC has certain obligations in respect to access to small customer installations. However, DNSPs may require access to metering installations in relation to network devices. Accordingly, the draft rules should be amended to provide DNSPs with a limited right of access for that purpose.

We note that rule 7.8.6 does not make any provision for the MC to cooperate with respect to ongoing access to a network device once it has been installed, for instance to carry out maintenance work. As network devices require ongoing maintenance by the DNSP, and access may be required for other purposes, then a provision should be inserted to this effect.