



Australian Energy Market Commission

CONSULTATION PAPER

National Electricity Amendment (Access to NMI standing data) Rule 2013

Rule Proponent(s)

EnergyAustralia

14 March 2013

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For and on behalf of the Australian Energy Market Commission

**RULE
CHANGE**

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About the AEMC

The Council of Australian Governments (COAG), through its then Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. In June 2011, COAG established the Standing Council on Energy and Resources (SCER) to replace the MCE. The AEMC has two main functions. We make and amend the national electricity, gas and energy retail rules, and we conduct independent reviews of the energy markets for the SCER.

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1 Introduction

On 13 November 2012, EnergyAustralia (Proponent) submitted a Rule change request to the Australian Energy Market Commission (AEMC or Commission).¹ This rule change request relates to the arrangements under the National Electricity Rules (NER) regarding retailers (and their authorised agents)² access to National Metering Identifier (NMI) standing data.

The rule change request seeks to clarify retailer obligations and amend the NER to permit retailer authorised agents to access NMI standing data. This clarification allows the authorised retailer agents to perform consumer acquisition activities and other functions on behalf of a retailer.

This Consultation Paper has been prepared to facilitate public consultation on the rule change proposal, and to seek stakeholder submissions on the rule change request.

This paper:

- sets out a summary of, and a background to, the rule change request;
- identifies a number of questions and issues to facilitate the consultation on this rule change request; and
- outlines the process for making submissions.

Submissions

Submissions are to be received by 26 April 2013. Additional details on lodging a submission are outlined in Chapter six of this paper.

Timetable

The draft rule determination (and draft rule if applicable) is required to be published by 27 June 2013. The AEMC is required to make a final rule within six weeks after the period for written submissions on the draft rule ends, unless otherwise extended by the AEMC for reasons that the rule change request includes issues of sufficient complexity or there is a material change in circumstances.³

1 EnergyAustralia Rule change request to the AEMC, 15 November 2012.

2 For the purposes of this rule change request, we use the terms 'retailer agents' or 'retailer authorised agents' to mean contractors or third party service providers who are engaged to undertake certain consumer acquisition services on a retailer's behalf.

3 Sections 102 and 107 of the NEL.

2 Background

This chapter provides an overview of the existing arrangements for access to, and use of, NMI standing data. We also provide background information to the rule change request, including a summary of an Australian Energy Regulator (AER) Compliance Bulletin issued in July 2012, and broader policy reforms which may intersect with the scope of this rule change request.

2.1 Existing provisions for access and use of NMI standing data

2.1.1 What is NMI standing data?

NMI standing data is the information related to a connection point⁴ at which supply of electricity for consumption occurs. NMI standing data information includes, but is not limited to: applicable network tariff, consumption threshold bands, loss factors, physical location and other data related to the physical properties of the metering installation at the connection point. NMI standing data does not contain consumption data from a consumers metering installation.

2.1.2 Mechanism to access NMI standing data

The Australian Energy Market Operator (AEMO), as part of its market functions, is required to establish a system to store and maintain NMI standing data, which provides for parties who are entitled to access the data to do so. To fulfil this requirement, AEMO established the Market Settlement and Transfer Solution (MSATS) system. The MSATS system includes a number of functionalities and categories of information. This includes:

- The Consumer Administration and Transfer Solution (CATS). This is used to record and update information on connection points used in the settlement of the electricity market. It is also used to handle the transfer of consumers between retailers, and facilitate NMI discovery (which is discussed below).
- Wholesale, Interconnectors, Generator and Sample (WIGS). Facilitates consumer transfer, the registration of metering installation and management of standing data for NMIs that have been classified as wholesale, interconnector, generator, sample or external profiles.
- The Metering Data Management System (MDM). This holds and processes metering data recorded from the consumers meter for the purposes of market settlement; and
- The Business to Business (or B2B) System.

⁴ Connection point is defined as the agreed point of supply agreed, for example, by the retailer and network service provider.

Access and use of the MSATS is through a dedicated and secure web portal. To access and use MSATS, registered participants are to comply with a number of AEMO procedures,⁵ including those that outline the authorisations and allocation of user identification logins to the system.⁶ Access to MSATS is in accordance with obligations in the NER and AEMO's strict password controls.⁷

2.1.3 Access to NMI standing data under the NER

Access to NMI standing data is set out under the NER. Rule 7.7 (a) of the NER sets out the parties that are entitled to access energy data, or receive metering data, NMI standing data, settlements ready data or data from the metering register for a metering installation. Under these NER provisions a number of parties are entitled to access or receive the data. For this rule change request, the following parties are relevant:⁸

- Registered Participants with a financial interest in the metering installation or the energy measured by that metering installation;
- financially responsible Market Participants (FRMP)⁹ in accordance with the meter churn procedures in the NER;¹⁰
- a consumer, upon request to their retailer, for information relating to that consumers metering installation.

NMI standing data is treated as confidential information in accordance with the relevant NER provisions. That is, registered participants must not disclose confidential information to any persons except as permitted by the NER and must not permit unauthorised persons to access confidential information.¹¹

2.1.4 Other relevant information

NMI Standing Data Schedule

5 Clause 3.19 (c) of the NER.

6 Refer to AEMO MSATS Procedures: Cats procedure principles and obligations, July 2012.

7 Australian Energy Regulator, Compliance Bulletin No. 8: Confidentiality requirements for energy, metering and NMI standing data, AER, June 2012, p.4.

8 Other parties entitled (in accordance with the NER) include: authorised metering and metering data providers; network service providers; the Australian Energy Market Operator (AEMO); the Australian Energy Regulator (AER); and the relevant jurisdictional regulators and energy Ombudsman.

9 A person who is registered by AEMO as a Market Generator, Market Customer, Market Small Generation Aggregator or Market Network Service Provider under Chapter 2 of the NER.

10 Clause 7.3. 4 (j) of the NER.

11 Clauses 8.6.1(b) (1) and 8.6.1(b) (3) of the NER. These are civil penalty provisions.

The NMI Standing Data Schedule purports to authorise registered participants (including prospective retailers¹²) to access NMI standing data. In accordance with the NER, AEMO is required to develop and publish a National Energy Market (NEM) wide NMI Standing Data Schedule.¹³ The NEM wide NMI Standing Data Schedule allows for, among other things, prospective retailers to access the NMI Standing Data for the purposes of providing a retail customer with a quotation or proposal and entering a change of retailer request into the MSATS database.¹⁴ The NEM Standing Data Schedule replaces certain jurisdictional arrangements relating to NMI Standing Data.¹⁵

NMI discovery

One of the functions provided by MSATS is 'NMI Discovery'. NMI discovery refers to the process where a retailer queries MSATS to find a NMI for a consumer (where it is not known or cannot be provided by the consumer). Once a NMI is identified, the prospective retailer is able to obtain the standing data.

2.2 AER Compliance bulletin

In its rule change request, the proponent sets out that its rule change request was being raised in response to an AER compliance bulletin. This was the compliance bulletin the AER issued in July 2012 relating to the confidentiality requirements under the NER for energy, metering and NMI standing data.¹⁶

As part of the compliance bulletin, the AER highlighted a compliance issue about retailers providing their authorised agents with access to MSATS to retrieve NMI standing data.

The issue arose in response to the AER discovering that a Market Participant (a retailer) had allocated a portion of its MSATS user identification logins to a third party service provider who was engaged to perform consumer acquisition services on behalf of that retailer (ie authorised retailer agent). The AER noted that this third party service provider (who was not a registered participant in the NEM) then used the login details to research NMI standing data.¹⁷

The AER considered that the Market Participant, (by providing that third party service provider with passwords to MSATS, and thereby access to NMI standing data) may

12 Prospective retailers refers to those retailers (who are also registered participants in the NEM) which are seeking to retailer for a consumers supply point (ie., not a consumers financially responsible Market Participant (FRMP)).

13 Clause 3.13.12A of the NER.

14 AEMO, 2012, www.aemo.com.au/en/Electricity/Retail.../0620-0027.pdf.ashx

15 Clause 3.13.12 of the NER.

16 AER, Compliance Bulletin No. 8: Confidentiality requirements for energy, metering and NMI standing data, AER, June 2012.

17 AER, 2012, Compliance Bulletin No. 8: Confidentiality requirements for energy, metering and NMI standing data, p 9.

not be complying with their confidentiality obligations under NER.¹⁸ The AER stated that, the retailer's contracted third party service provider was not one of the persons entitled to access or receive NMI Standing Data under either Rule 7.7 or 3.13.12 of the NER. The AER also considered AEMO is the only party under Rule 7.7 or related clauses which can provide energy data, NMI standing data or metering data to its authorised agents.¹⁹

The compliance bulletin indicated that the AER would not take any enforcement action in relation to retailers that have provided, or may be providing, third party service providers (acting on a retailer's behalf to perform consumer acquisition activities) with access to NMI standing data. This approach would take effect from 29 June 2012 and be reviewed after 31 December 2013. The AER noted however that it would closely monitor industry behaviours and may use its discretion to take any enforcement action if it considers the disclosure of confidential information has resulted in a significant market impact or breach of privacy.²⁰

In the compliance bulletin, the AER decision not to take any immediate action was based on a number of factors including:

- AEMO's MSATS introduction guide contemplated the use of MSATS by agents approved by registered participants. We understand that AEMO are now revising the introduction guide and other relevant documents to remove references to third party agents in response to AER's compliance bulletin.
- Jurisdictional NMI Standing Data Schedules (that were developed under Clause 3.13.12 of the NER) regarding the requirements on registered participants to use of NMI standing data do not contemplate access by authorised agents of registered participants to this data.
- Allowing sufficient time for industry and policy makers to clarify the requirements of the NER and other energy legislation or, alternatively, for market participants to change their practices.
- There was broader policy work occurring at the time of its decision regarding the clarity of Rule 7.7 (a) of the NER, and the role of third parties in the market to provide energy products and services.²¹ These are outlined in the section below.

18 Clause 8.6.1 of the NER.

19 AER, 2012, Compliance Bulletin No. 8: Confidentiality requirements for energy, metering and NMI standing data, p.9.

20 AER, 2012, Compliance Bulletin No. 8: Confidentiality requirements for energy, metering and NMI standing data, p 10.

21 AER, 2012, Compliance Bulletin No. 8: Confidentiality requirements for energy, metering and NMI standing data, pp.10-11

2.3 Related reforms

There are a number of broader reforms that are considering similar issues which may intersect with this rule change request. In particular, the issues relate to the clarity of Rule 7.7 (a) under the NER and the role of third party service providers in the market, including the appropriate energy market frameworks that should apply.

2.3.1 AEMC Power of choice review

In November 2012, the AEMC published the Final Report for the Power of Choice (PoC) review. The review identified the opportunities (information, education, and technology, and flexible pricing options) for consumers to make more informed choices about the way they use electricity. The review also identified the market conditions and incentives needed for network operators, retailers and other parties to maximise the potential of efficient demand side participation (DSP) and respond to consumers' choices. The overall objective of the review was to ensure that the community's demand for electricity services is met by the lowest cost combination of demand and supply side options.²²

The AEMC PoC Final Report put forward a suite of recommendations to the existing NEM arrangements. For the purposes of this rule change request, the recommendations of relevance include:

- Amending Rule 7.7 (a) of the NER regarding consumer (and their agents) access to energy information.²³ This Rule change request also seeks to amend Rule 7.7(a).
- Amending the National Energy Customer Framework (NECF)²⁴ to establish a framework governing (non-retailers and regulated network services) who provide energy services and residential and small business consumers. The proposal outlined that the framework should consider what aspects of the NECF would apply to third party energy service providers and in what circumstances.²⁵ This rule change request specifically relates to third party service providers who are under contract to a retailer to perform certain services.
- A review of retailer switching arrangements to better support consumer choice and to make consumers switching retailers more efficient (ie., timing). This rule

²² Australian Energy Market Commission, Power of choice review - giving consumers options in the way they use electricity, final report, AEMC, 30 November 2012.

²³ Australian Energy Market Commission, Power of choice review - giving consumers options in the way they use electricity, final report, AEMC, 30 November 2012, Chapter 3.

²⁴ The NECF establishes the energy specific protection obligations and arrangements for regulating the sale and supply of electricity and gas to consumers. It includes amongst other things, consumer protection measures relating to marketing, informed consent, security and privacy provisions.

²⁵ AEMC, op.cit, 39-46.

change request may have implications for consumer switching arrangements and hence access to relevant information.²⁶

- A proposal to introduce a framework in the NER that provides for competition in metering and related services for residential and small business consumers. This would, if agreed, have implications for who is able to have access to relevant consumer energy and metering data under the existing rules.²⁷

Following receipt of the AEMC Power of choice Final Report, the Standing Council on Energy and Resources (SCER) agreed to progress a number of rule changes proposals. This includes the proposal to revise Rule 7.7 (a) of the NER. The rule change proposals from SCER are expected to be provided to the AEMC in the first half of 2013.

2.3.2 Other reforms

We note that there are other reforms, where the work may intersect with some of the issues in this rule change request such as:

- SCER smart meter work program to review customer protection arrangements in context of smart meters. This work covers a range of consumer protection issues and energy services/products provided by a range of parties (including third party energy service providers) related to introduction of smart meter services.²⁸
- An Australian Government scoping study on the need for an energy information hub to improve energy information disclosure. An element of this work is considering how third party service providers can access consumer information and how that data can be efficiently transferred to these and other parties.²⁹

²⁶ AEMC, op.cit, 37-38.

²⁷ AEMC, op.cit, Chapter 4.

²⁸ SCER Energy Market Reform Working Group, National Smart Meter Consumer Protection and Safety Review, Officials report, November 2012.

²⁹ The Australian Government Department of Energy and Resources, 2012 Scoping study for a consumer energy data access system (CEdata), August 2012.

3 Details of the rule change request

3.1 Perceived problems

The rule change request by the proponent arose in response to the AER Compliance Bulletin, issued in July 2012. Specifically, the proponent is concerned that the AER compliance bulletin may have implications for:

- retailer's who are not a consumer's FRMP or have financial interest in the consumers metering installation. While, the AER compliance bulletin focussed on compliance issues related to third party service providers, the proponent stated that the AER's strict interpretation of Rule 7.7 (a) may also imply that there is no basis within the NER for retailers that are not a consumer's FRMP or have a financial interest in the metering installation to access standing data for a NMI. Given this, there may be inconsistency in the NER between Rule 7.7 (a) and clause 3.13.12 (which provides access through the NEM Standing Data Schedule). The proponent considers this issue needs to be addressed to avoid confusion and any potential compliance risks.³⁰
- retailer business models for conducting consumer acquisition activities. The AER raised that third party service providers under contract with a retailer are not entitled to access NMI standing data. The proponent highlighted that retailers and other participants use third parties to perform certain functions/services on their behalf. The proponent considered that limiting access to such parties is impractical and would lead to increased costs for retailers and consumers. This is because a number of retailers will be required to restructure or develop in-house functionality for services in order to comply with the NER. This would lead to higher costs which ultimately would be passed onto consumers.³¹

3.2 Proposed solution

To address the issues raised, the proponent is seeking to amend the NER, in particular Rule 7.7 (a). The rule change request includes a proposed rule.

The proposed rule includes a new provision which explicitly provides for retailers (and their agents) to access and receive NMI standing data. Access to NMI standing data would be for the purpose of conducting relevant retailing activities, including but not limited to:

- customer acquisition;
- billing and settlements;
- customer transfer; and

³⁰ EnergyAustralia Rule change request to the AEMC, EA, 15 November 2012, p.3.

³¹ EnergyAustralia Rule change request to the AEMC, EA, 15 November 2012, p.4.

- other retailer functions as required.

The rule change request also proposes an additional clause relating to the compliance of retailers who are utilising third party service providers to perform certain services.

In its rule change request, the proponent provided its rationale for the proposed rule. It states that the proposed rule would:

- Clarify the intent of the relevant provisions in the NER. The changes would create certainty for retailers regarding the ongoing nature of their operations, and preserve the ability for customers to choose their retail supplier based on accurate pricing information.
- Align the regulatory framework with efficient market practices.
- Remove any additional costs to consumers from retailers having to adapt their processes and system to comply with existing NER provisions.

4 Assessment Framework

The Commission's assessment of this Rule change request must consider whether the proposed Rule promotes the National Electricity Objective (NEO) as set out under section 7 of the National Electricity Law (NEL). The NEO states:

“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.”

In assessing the rule change request against the NEO, the Commission will consider the likely long term costs and benefits of adopting the rule change request compared to the counterfactual of not making the proposed change to the NER. It will also consider whether the proposed rule satisfies the rule making test in that it will, or is likely to, contribute to the achievement of the NEO.

The Commission’s assessment for this rule change request will focus on:

- Under what conditions do market participants require NMI standing data, and what is the minimum amount of NMI information required for market participants to carry out their relevant functions (ie., what is the data that can be accessed and who is able to use the information). This will take into account the extent, to which consumer privacy of data and security of AEMO systems is maintained, and the clarity and transparency of existing arrangements.
- The efficiency benefits of retailers (and their authorised agents) having access to the information to undertake a wider range of services on behalf of consumers (ie., consumer acquisitions/consumer transfers etc). This will take into account:
 - the efficient operation of the retail electricity market;
 - whether the transaction costs for consumers to make choices on energy products and services are reduced and hence facilitates retail competition;
 - whether there are appropriate consumer safeguards in place with respect to privacy of data; and
 - whether the operation of AEMO's market systems and processes are improved.

It is important to note that this rule change request will only be considering changes to the NER. We recognise that there are both related and other reforms which have proposed, or are considering changes to Rule 7.7 (a) of the NER and NECF. We will

also take account, where possible, those reforms to Rule 7.7 (a) to ensure there is a consistent and transparent approach.

The assessment framework will be reviewed following the receipt of submissions and AEMC's own analysis.

5 Issues for consultation

We have identified a number of issues for consultation that appear to be relevant to this Rule change request. The AEMC may also consider broader issues related to this rule change request, such as the Power of choice review noted in section 2.3.1. The issues for consideration outlined below are provided for guidance. Stakeholders are encouraged to comment on these issues as well as any other aspect of the Rule change request or this paper including the proposed assessment framework.

5.1 Purpose and use of NMI standing data

The proponent has stated that as a consequence of the AER compliance bulletin, there is currently industry uncertainty regarding the intent of the NER provisions for retailers (and their authorised agents) to access and use NMI standing data. In addition, given the AER's strict interpretation of rule 7.7 (a) of the NER, the proponent considers that the existing provisions in the NER may be inconsistent and do not necessarily reflect current market practices.³²

As outlined in Chapter one, the NER provides for consumer's retailers and certain other parties to access NMI standing data. As part of facilitating retail competition and to support consumers to switch retailers, there is also provision for a consumer's prospective retailer to access standing data for a consumer's NMI. This is for the specific purpose of: providing a quotation or proposal to a consumer while seeking to be the retailer for a customer's supply point; and entering a change of retailer request into MSATS for a consumer.³³

Access to certain information is a key condition for facilitating efficient market outcomes. Hence, regulatory frameworks should provide transparency and certainty of the conditions that apply for accessing information and the type of information that can be accessed. This is so that parties are able to undertake their relevant market functions and provide the appropriate services on behalf of consumer. Clarity of the NER provisions and obligations also ensures that any unnecessary compliance risks and costs to parties are avoided.

For this rule change request, it is important to clarify the policy intent of the current arrangements. Therefore, we will have regard to the intended purpose of NMI standing data, including the minimum information that retailers (and hence their authorised agents) require to fulfil their appropriate market functions, and principles for ownership and use of the information. This will assist to determine whether the provisions within the NER are unclear and thus require change.

³² EnergyAustralia Rule change request to the AEMC, EA, 15 November 2012.

³³ AER Compliance Bulletin No. 8, July 2012, p.4.

Question**Purpose of NMI standing data and access arrangements**

1. What is considered the minimum information required for retailers to undertake their market functions, for example, sale and supply of electricity as opposed to consumer acquisition activities?

2. Are the existing provisions in the NER ambiguous regarding retailers ability to access and use NMI standing data for the purposes of providing accurate quotes to consumers? If yes, what changes are required to the NER?

5.2 Retailer consumer acquisition activities

5.2.1 Retailer authorised agent's access to NMI standing data

The NER provides obligations in relation who can have access and receive certain types of information (including NMI standing data) and how that data should be used. Such provisions are in place to control access and ensure confidentiality of consumer information as required.³⁴

As noted, the AER in their compliance bulletin outlined that there is no right, other than AEMO, under clause 7.7, or related clauses of the NER for retailers to provide access to energy data, NMI standing data or metering data to authorised agents. Further, such third parties may not be entitled to access or receive NMI standing data under Rule 7.7 or Clause 3.12.12 of the NER.³⁵

Third party service providers

Retailers in recent times have diversified their business operations which has included contracting third party service providers (ie retailer authorised agents) to undertake certain services (ie., consumer acquisition activities (attracting and retaining customers) or outsourcing information technology back office functions).³⁶

The proponent highlighted that retailers may assign MSATS logins to their authorised agents in order to enable these parties to perform such services, for example to quote consumers on retail tariffs. The proponent stated that access to MSATS and hence NMI standing data was provided to these parties on the understanding that the NER implied permission to do so.³⁷

Third party service providers play an important role in the market. For example, third party agents acting on behalf of a consumer can help them to make more informed choices about their consumption. Alternatively, third party service providers can offer

³⁴ AER Compliance Bulletin No. 8, July 2012, p. 4.

³⁵ AER Compliance Bulletin No. 8, July 2012, p. 11.

³⁶ EnergyAustralia Rule change request to the AEMC, p.1.

³⁷ EnergyAustralia Rule change request to the AEMC, p.1.

an efficient means for registered participants to perform certain regulatory functions and/or deliver services to consumers. This in turn may facilitate retail competition and ultimately lead to lower prices paid by consumers.

Impacts for this rule change

For this rule change request, it is relevant to distinguish between the role of third party service providers that are under contract with a retailer (or other market participants), and those third party energy service companies who provide energy products and services to consumers or more generally in the market.

For those third party service providers which are contracted to a retailer (or other parties), it is important to understand the nature of the existing arrangements which permit registered participants to use contractors and provide information to those parties.³⁸ It is also relevant to consider the contractual arrangements between retailers and their suppliers and the obligations and requirements for each party. Such arrangements may mean that the requirement needed under the NER for these suppliers may be different to those where there are third party energy service business providing products and services generally in the market.

Issue for consideration

In assessing whether any changes are required to the NER, we will assess the extent to which, allowing third party service providers (who are undertaking specific functions on a retailer's behalf) with access to the data facilitates efficient retail business practices and competition for the benefit of consumers. For example, the proponent outlined that while consumer switching may be achieved without retailer (or authorised agents) access to NMI standing data in MSATS, such an approach is less efficient than current market practices. The proponent highlighted that if access was not permitted, then potentially a customer would have to be provided with a range of quotes, of which only one would be relevant. Secondly, the retailer may have to ask a consumer certain information. This would be difficult as in some jurisdictions retailers are prohibited from asking consumers technical information (such as seeking information on the network tariff or NMI).³⁹

NMI standing data is collated and accessed through MSATS system. As noted, AEMO has a number of procedures and registration requirements for registered participants to access and utilise MSATS. Where there are parties other than registered participants accessing MSATS, generally these parties require authorisations or contract arrangements to be put in place with AEMO. Therefore, it is important to consider AEMO's existing requirements and procedures relating to non-registered participants use of MSATS and what approach may be required for retailer authorised agents.

The AEMC Power of choice review considered the issues and market arrangements needed with respect to consumer third party agents or energy service companies that

³⁸ Clause 8.6 of the NER.

³⁹ EnergyAustralia Rule change request to the AEMC, p.5.

provide products and services generally in the market. A number of recommendations were made. For this rule change request, we do not intend to revisit the issues where recommendations are now being progressed however; to the extent possible (given timing) we will take into account any outcomes of those processes.

Questions	Retailer authorised agents access to NMI standing data
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<p>2. Are the existing regulatory arrangements and retail contractual arrangements with their suppliers sufficiently clear and robust to allow retailer agents access to NMI standing data (and hence MSATS)?</p>
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<p>3. Should the NER be amended to provide for retailer authorised agents access to NMI standing data or should other mechanisms be considered? If the NER should be amended, what provisions should be put in place?</p>
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5.2.2 Consumer protections and safeguards - data access and privacy

The proponent has proposed that the NER is amended to permit retailer authorised agents to access NMI standing data. This is in response to the AER's concerns regarding data security and confidential information being provided to parties who are not registered participants in the NEM or authorised by AEMO.

Existing consumer protection and safeguards

Currently, retailers have responsibilities to obtain informed consent from consumers when providing energy products and services. Retailers are also subject to a range of provisions under the NER and NECF relating to consumer protection and privacy of information. In addition to energy market framework requirements, they also have obligations under jurisdictional codes, National Privacy Principles (NPP) and Australian Consumer Law (ACL).

While these arrangements are in place for retailers, and other registered participants, the requirements under the NER and NECF do not generally apply to third party energy service businesses. These parties are however subject to ACL (which provides contractual and market conduct requirements for these parties when engaging with consumers) and NPP.

The proponent noted AER's concerns regarding potential wider access and use of information by third party service providers. The proponent considered that any potential data security or privacy issues may be mitigated by the fact that any party accessing NMI standing data/MSATS would be bound by privacy and consumer legislation within their commercial agreements with retailers. Further, in entering into a contractual agreement with a third party to undertake sales and marketing or back office activity, the principle (in this case the retailer) assumes the compliance risks

associated with the actions of its agents as long as the agent or contractor acts within the scope of a commercial agreement.⁴⁰

Robust market arrangements that ensure confidentiality and privacy of information can help build consumer confidence and participation in the market. Promoting consumer confidence is also likely to facilitate competition in the retail energy market.

Issue for consideration

In assessing the proposed changes, the existing consumer safeguard arrangements for data access and privacy will be considered. This includes the existing arrangements for retailers to obtain explicit informed consent when undertaking NMI discovery, or accessing NMI standing data (for example, whether different provisions are required, for example, where there is already consumer consent to access NMI information (ie., a consumer is a retailers existing customer). Further, whether any additional compliance or accreditation requirements are needed (for example, is the ACL sufficient given retailer obligations and contract arrangements which are in place).

As noted, the issue of third party service providers in the market and potential compliance and authorisations under energy market frameworks has been the subject of broader reviews (ie., PoC and SCER smart meter work). We will consider those policy proposals with respect to consumer's interests and protections to the extent that they are relevant to this rule change request.

Questions	Consumer protections and safeguards - data access and privacy
	<p>4. Noting that there are a suite of consumer protection and obligations on retailers, should additional requirements be placed on their service providers who are performing consumer acquisition activities on the retailer's behalf?</p> <p>5. If additional obligations are required for authorised retailer agents, what arrangements should be put in place?</p>

⁴⁰ EnergyAustralia Rule change request to the AEMC, p.4.

6 Lodging a submission

The Commission has published a notice under section 95 of the NEL for this Rule change proposal inviting written submission. Submissions are to be lodged online or by mail by 26 April 2013 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 proposals.⁴¹ The Commission publishes all submissions on its website subject to a claim of confidentiality.

All enquiries on this project should be addressed to Lisa Nardi on (02) 8296 7800.

6.1 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 "ERC0153". 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.

6.2 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: ERC0153.

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.

⁴¹ 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
B2B	Business to Business
CATS	Consumer Administration and Transfer Solution
Commission	See AEMC
DSP	demand side participation
FRMP	financially responsible Market Participants
MDM	Metering Data Management System
MSATS	Market Settlement and Transfer Solution
NECF	National Energy Customer Framework
NEL	National Electricity Law
NEM	National Energy Market
NEO	National Electricity Objective
NER	National Electricity Rules
NMI	National Metering Identifier
NPP	National Privacy Principles
SCER	Standing Council on Energy and Resources
WIGS	Wholesale, Interconnectors, Generator and Sample