

22 April 2013

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

Dear Mr Pierce

Project Reference Code: ERC0153

NATIONAL ELECTRICITY AMENDMENT (ACCESS TO NMI STANDING DATA) RULE 2013

The NSW Distribution Network Service Providers comprising Ausgrid, Endeavour Energy and Essential Energy (the NSW DNSPs) welcome this opportunity to provide a joint submission on the proposed National Electricity Amendment (Access to NMI Standing Data) Rule 2013 and the accompanying Consultation Paper dated 14 March 2013.

The proposed amendment to the National Electricity Rules (NER) by Energy Australia ('the proponent') seeks to clarify the obligations of Retail Suppliers and permit their authorised agents to access NMI Standing Data for the purposes of consumer acquisition activities and other functions on behalf of the Retail Supplier.

Networks NSW notes that NMI Standing Data is confidential information and supports the policy intent (as confirmed by the AER and AEMO) that third party access to standing data should be appropriately limited.

Therefore, Networks NSW does not support the proposed rule change and submits the following comments for your consideration.

National Electricity Rules Requirements

The AEMC has sought comment on any ambiguity in the NER regarding the ability of Retail Suppliers to access and use NMI Standing Data for the purposes of providing accurate quotes to consumers.

Networks NSW does not consider that clauses 7.7(a) and 3.13.12 in the NER are ambiguous with respect to the ability of Retail Suppliers to access and use NMI Standing Data for the purposes of providing accurate quotes to consumers.

Clause 7.7(a) of the NER clearly lists the only persons entitled to access NMI Standing Data. Unless a Retail Supplier is the *financially responsible market participant* (FRMP), only a Retail Supplier (as a Registered Participant) with a financial interest in the metering installation or the energy measured by that metering installation can access NMI Standing Data.

In this context the Retailer Supplier's financial interest in the metering installation would appear to refer to a financial arrangement with respect to the provision of the metering installation by the Metering Provider and the reference to energy measured by that metering installation would appear to refer to a financial arrangement with respect to the information derived from the metering installation in which it has a financial interest.

Clause 3.13.12 of the NER requires among other things, for AEMO to make available to Market Customers (including Retail Suppliers) on request, NMI Standing Data in respect of connection points in a participating jurisdiction. This access to NMI Standing Data can only be provided on the basis that the Market Participant is entitled to receive the data (under the criteria stated in the *Jurisdictional NMI Standing Data Schedule*) and that it is both in accordance with the *Jurisdictional NMI Standing Data Schedule* and for the purposes permitted by the *Jurisdictional NMI Standing Data Schedule*.

Nothing in clause 3.13.12 of the NER provides that AEMO must make NMI Standing Data available where the collection, use or disclosure of that information by AEMO would breach applicable privacy laws.

While AEMO may provide NMI Standing Data to a Registered Participant, where the provision of that information is required to give effect to other provisions of the *Rules*, it does not diminish the requirements of the *Jurisdictional NMI Standing Data Schedule*.

Where AEMO develops a NMI Standing Data Schedule which supersedes clause 3.13.12, it must have regard to the *Jurisdictional NMI Standing Data Schedule*¹.

Networks NSW concurs with the AER that a retailer's contracted third party service provider is 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, and that AEMO is the only party under Rule 7.7 or related clauses which can provide energy data or metering data to its authorised agents.

Retail Supplier Practices

Networks NSW is concerned that the access and use of NMI Standing Data by unauthorised persons (including third party service providers) is likely to result in the trawling of personal information of its distribution customers, as acknowledged by the proponent.

Whilst access to NMI Standing Data information may enable certain Retail Suppliers to select customers and areas to target, it excludes metering data and retail tariff information which underpins customer behaviour in switching Retail Suppliers. Network NSW notes that in addition to seeking the removal of restrictions on third party access to NMI Standing Data, the proponent is seeking third party access to MSATS.

¹ Clause 3.13.12A(1). Network NSW notes that on 18 April 2013, the AEMC initiated a Rule change to delete clause 3.13.12 of the NER.

The proponent has stated that since the inception of retail contestability, a number of Retail Suppliers have provided third parties with access to MSATS and that it is critical for these Retail Suppliers to be able to maintain MSATS access for their contracted back office providers for the effective operation of their businesses and providing services to their customers.

The proponent contends that excluding third parties from accessing NMI Standing Data and MSATS *“inhibits the customer’s access to information which will help them make an appropriate decision about their electricity pricing”* and threatens the *“ability for customers to choose their retail supplier based on accurate pricing information”*.

Network NSW considers a customer’s ability to choose its Retail Supplier is not compromised by a retail price offering. Consumers are free to choose any Retail Supplier to arrange their supply of electricity irrespective of the retail offer. The accuracy of pricing the retail offering is a significant concern for a Retail Supplier (in that it would be expected to provide a firm price to the customer), however, the customer is free to choose whether to accept or reject that retail offer irrespective of whether it accurately reflects the costs to a Retail Supplier.

The shifting of retail pricing risk from a Retail Supplier to a customer does not enhance customer choice or promote competition in the NEM.

The proponent has also identified, but not quantified, the avoidable costs of complying with the NMI Standing Data requirements in developing retail offerings to customers in support of its Rule change proposal. In particular, the proponent has identified the costs to customers from a Retail Supplier having to adapt their processes and system to comply with existing provisions in the NER.

This justification fails to recognise that there are Retail Suppliers that have incurred these costs in order to comply with the NER. These Retail Suppliers would be disadvantaged (to the extent of the costs they incurred) should the NER be amended to remove the third part access restrictions on NMI Standing Data.

Network Tariff

To the extent that access by third parties to NMI Standing Data provides network tariff information, it does not necessary follow that efficient pricing is promoted, unless the third party Retail Supplier passes on the actual NUOS Services Charges attributed to a customer’s connection point to that specific customer. This is because a Retail Supplier has the discretion not to pass on the actual network costs to the customer and may allocate or smear those costs across other customers or classes of customers through their retail tariffs.

Related reforms

Network NSW notes that neither the AEMC in its Final Report for the Power of Choice Review nor the SCER proposed or agreed for Retail Suppliers to utilise, provide access to, or disseminate NMI Standing Data to third parties including agents and service providers.

In its Power of Choice Review, the AEMC noted:

“A key condition for third party service providers developing innovative products and energy services is the provision of information about different consumer sectors’ consumption patterns and representative load profiles.”²

The AEMC observed that “retailers are entitled to access consumption profiles for their consumers” and that “other third party providers (for example, ESCOs, aggregators and other retailers) seeking to develop DSP products can only access detailed information about consumption profiles following informed consent from each and every consumer.”³

Whilst the AEMC recognised this information asymmetry, its primary concern was to ensure consumers had the ability to easily access their data. In that context it noted that there may be merit in the availability of broader market information about consumer sector (i.e. industrial, commercial and residential) load profiles which could be used to help parties develop and offer potential DSP products and services by third parties.

However, the AEMC did not recommend any specific changes to regulatory arrangements for the provision of broader information. Rather, it considered that the market should be allowed to drive the provision of such information (for example through data derived from pilots and trials, and planning information published by DNSPs) to illustrate and understand the nature of consumption patterns across for different types of consumers across the NEM. This information would then support the ability of third party providers to develop DSP products to offer to residential and business customers⁴.

The Power of Choice Review did recommend an amendment to the National Energy Customer framework (NECF) to include a framework which governs third parties (non-retailers and non-regulated network services) providing energy services to residential and small business consumers⁵. Under this recommendation, the framework would outline which aspects of the NECF apply, and in what circumstances. AER guidelines would also be developed to outline NECF exemptions for these services.

In March 2013, the SCER agreed in principle to the recommendation and directed officials to progress work for Ministerial decision on whether any changes are necessary to the framework and report on progress by May 2013.

Retail tariffs in NMI Standing Data

Notwithstanding the above, should third party access to NMI Standing Data (and in particular network tariffs) be considered necessary for electricity retail prices to reflect the cost of supply to the customer and promote the uptake of DSP in the NEM, Networks NSW considers a more meaningful approach to achieve this objective would be to identify the true cost to customers (in the NMI Standing Data).

² P65

³ P65-66

⁴ P67

⁵ Pi, Recommendation 4. It should be noted that this recommendation is distinct from third parties (non-retailers and non-regulated network services) providing energy services to third party Retail Suppliers.

If the disclosure of NMI Standing Data to third parties is required in order to remove information asymmetries, promote transparency and efficient retail pricing, Networks NSW considers that NMI Standing Data information should be expanded to include 'read only' access to the current retail tariff of the customer (which should be disclosed by the financially responsible Market Participant).

This would inform a prospective Retail Supplier as to the most appropriate method and price in setting their retail offer to a customer, whilst minimising the time and costs associated with developing retail offers for customers.

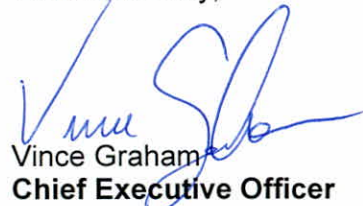
A significant benefit to network service providers is that with the inclusion of retail tariffs in NMI Standing Data, it would be possible to ascertain the price elasticity of demand for electricity and assist the development of network tariffs, network planning and investment.

Authorisation and Safeguards

Should the NER be amended to provide for third party access to NMI Standing Data, Networks NSW submits that third parties accessing that NMI Standing Data be appropriately authorised (such as by explicit informed consent of the customer), accredited and registered with AEMO, and that sufficient safeguards relating to both confidentiality and privacy are established.

Should you have any questions on this submission, please contact Mr Mike Martinson, Group Manager Regulation at Networks NSW on (02) 9249-3120 or via email at michael.martinson@endeavourenergy.com.au.

Yours sincerely,



Vince Graham
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