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Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

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Reference ERC0169: Expanding Competition in Metering and Related Services Rule Change – Draft Rule Determination

Thank you for the opportunity to respond to the Expanding Competition in Metering and Related Services Rule Change – Draft Rule Determination (the Paper).

Simply Energy is a leading energy retailer servicing Victoria, South Australia, New South Wales and Queensland. Simply Energy is a member of the Energy Retailer's Association of Australia (ERAA) and supports the ERAA's submission in response to the Paper.

The Paper sets out the Australian Energy Market Commission's (AEMC) draft rule determination for expanding competition in metering and related services for residential and small business consumers, to further the overall objective (from the AEMC Power of Choice review) of meeting the community's demand for electricity services by the lowest cost combination of demand- and supply-side options. The AEMC is seeking stakeholder responses to the draft rule determination.

Simply Energy strongly supports the draft rule determination

Simply Energy welcomes the reform to expand the benefits of competitive provision of smart metering to residential and small business customers. Many consumers desire lower electricity charges, and have invested in rooftop photovoltaic (PV) generation and energy efficiency measures (such as LED lighting) to achieve this. There are also consumers who have discretion over when they consume, but are currently unable to benefit from exercising this discretion. Smart meters will remedy this, and will do so more efficiently under competitive than regulated arrangements.

The AEMC's draft rule determination shows balance and will maximise the opportunities for consumers to benefit from smart meters. The draft rule balances competitive tension and Rules requirements that create an environment providing incentives and opportunities to use the meters rolled out by others. The interests of consumers will not be best served if this balance is lost.

As a result, we strongly urge the AEMC to maintain the approach taken in the draft rule determination and resist the calls from some parties to impose price regulation or some other form of regulated access arrangement with respect to smart meter services.

The draft rule determination includes a review by the AEMC of competition in the smart meter services market once that market is established. Additionally, the Australian Competition and Consumer Commission (ACCC) is able to investigate and prosecute claims of unlawful anti-competitive conduct at any time.

As a second-tier retailer without an incumbent customer base we are acutely aware of the risks that we face if anti-competitive conduct becomes established in the smart meter services market.

We could also find ourselves in a position where we are negotiating with a dominant service provider. However, we believe it is far too early to be declaring that regulation is required given the market has not started yet and has not been given time to prove otherwise. We would much prefer to negotiate terms and conditions with providers as it will lead to better outcomes than a once size suits all set of terms and conditions deemed by a regulator.

A retailer-led roll out will maximise the benefits to consumers

The key difference between competitive and mandated roll outs is that the competitive roll out provides much stronger incentives for the party rolling out smart meters to ensure that consumer benefits are achieved and implementations are well managed and costs are effectively controlled.

We are concerned that other interested parties may attempt to reopen the question of whether retailer-led smart meter roll outs are a better way of providing consumers with smart meter benefits than mandated distributor roll outs, which are imposed on consumers and costs recovered from them by increased regulated charges.

Specifically, distribution business presentations have attempted to raise general doubts about retailer-led roll outs in relation to issues that are already being addressed.

For example, they claim that there will be new and additional network costs due to retailer-led smart meter roll outs. We do not understand how the opportunity to obtain additional data about their networks and to work with retailers to provide customers with stronger incentives to use the network efficiently will lead to new and additional network costs.

Distribution businesses continue to raise the issue of safety and operational process impacts. Safety and operational considerations are at the centre of how energy industry participants interact and are at the core of the smart meter procedures development managed by Australian Energy Market Operator (AEMO) for the industry.

Also, distribution businesses are able to negotiate with MCs and do not need regulation of access, prices, or contract terms.

Distribution businesses have indicated that they get network benefits from coverage of approximately 15% of the sites on their network. This gives them considerable scope to negotiate with different MCs who will be competing to provide the distribution business with the information it needs.

Additionally, there is no requirement for standard contracts that require a new MC at a site to honour the contracts the distribution business had with the previous MC. This kind of onerous regulation would only be required in the case of clear demonstrated market failure. This is not the case here, as distribution businesses can negotiate from a strong position that reflects the options they have, which are discussed above.

We are actively engaging with potential MCs to understand what they will be offering and how we can best position Simply Energy in the smart meter market to provide benefits to our business and our customers.

We suggest that the AEMC could encourage distributors to engage with potential MCs and explain what services they may seek from MCs, rather than continuing to raise high-level objections to the development of this new market.

Network devices requirements restrict consumer choice

The draft rule determination allows distribution businesses to retain or install meters or other devices at consumers' sites for operational and monitoring purposes, as long as they are not used for metering.

This aspect of the draft Rules fails to provide consumers with a choice with respect to the devices installed at their premises and the services they can obtain.

For example, a consumer may wish to obtain services and products that are enabled by a smart meter offered by their retailer, but is unable to obtain the smart meter because of limited meter board space and the distribution business's decision to retain its meter at the site for non-metering purposes if another meter is installed. In this situation the distribution business is able to veto the customer's decision to have a smart meter installed by their retailer, as there is no space for two meters.

If customers with smaller meter boards are to obtain the benefits of smart meters then the distribution businesses should not be given veto powers.

Distribution businesses do not need the power to impose devices on consumers that consumers do not want. In most cases we expect that MCs and distribution businesses will work together to ensure that smart meters and other network devices that benefit the consumer are accommodated at the consumer's site. It is likely that a retailer would require this of its MC, in order to maximise positive outcomes for its customer.

Furthermore, the distribution businesses are able to deploy devices for operational and monitoring purposes at locations other than customer meter boards. For example, these devices could be deployed on power poles.

Conceptual concerns based on one party's reading of economic theory does not demonstrate that there is a market failure requiring regulation

A potential service provider has raised the conceptual concern that it will be subject to monopoly pricing from MCs. It has used this as a basis for calling for price regulation or other forms of access regulation to MC services to be put in place to benefit businesses such as itself.

This is a conceptual concern only. No market failure has been demonstrated because the potential service provider has not shown that it has tried to negotiate with potential MCs but has been faced with monopoly prices.

The AEMC and ACCC have powers to intervene if they are presented with evidence that unlawful price discrimination and similar practices are evolving in the smart meter market. Regulation should only be considered when evidence is compelling.

Price regulation will hinder the entry of niche new entrants in the smart metering market

It is not in the interests of consumers to impose regulations that stifle competition in the smart metering services market. If regulation imposes barriers to entry that are excessive then innovation will be reduced and consumers will miss out on the benefits of new services and ways of working.

In particular, price and contract regulation should be avoided because it will disproportionately affect new entrant and small metering businesses that wish to offer smart metering services as MCs.

Effective ring-fencing of regulated distribution businesses is more important than more onerous retailer ring-fencing

One of the concerns considered during this Rule change is the risk that if MCs are integrated with retailers then customer data that is available to the MC may be inappropriately used by its integrated retailer.

The draft rule determination includes ring-fencing requirements to address this risk. We consider that the requirements appropriately deal with this risk, without imposing overly onerous requirements that will drive up cost and reduce competition in the smart metering market.

It is impossible for any credible ring-fencing requirements to eliminate every conceivable risk. When looking to contract with MCs that are in common ownership or similar close arrangements with other retailers we will look to the MC to address the specific risks that we have identified. Our conclusion will reflect more than just the ring-fencing structures the MC has put in place; critically we will be focussed on whether we think we can work effectively with that MC.

Under the draft rule determination regulated distribution businesses are able to participate in the competitive smart meter market. This raises very different risks to those addressed by retailer ring-fencing. We are able to ourselves address many retailer ring-fencing risks, but we are unable to address the key risk relating to regulated businesses: that they use regulated revenue to subsidise their competitive activities.

We urge the AEMC to put in place specific requirements that the AER must enforce to ensure that regulated revenue is not used to subsidise competitive businesses.

The minimum functionality specification for smart meters

Simply Energy considers that the minimum services specification set out in Schedule 7.5 to Chapter 7 of the Rules as modified by the draft rule determination is appropriate for a retailer-led smart meter roll out.

We consider that the specification will support roll outs that maximise net benefits to consumers. Simply Energy was represented on AEMO's industry group that informed AEMO's smart meter minimum services specification advice. Many services were debated by the industry group and all services except those included in Schedule 7.5 were considered inappropriate for inclusion in a minimum specification.

This outcome remains appropriate, as the ultimate intention of the competitive metering framework being established is that energy consumers will determine the variety and quality of the services being delivered through smart metering technologies. As a result, consumer demand and industry innovation should be dictating the capabilities of the metering technologies being used.

Consumer demand for products and services developed by innovative retailers should be allowed to determine the functionality contained in the meter to the greatest extent possible. This will increase the potential for dynamic efficiency over time as investment is made in the capabilities that consumers have proven they have a demand for.

If a retailer wishes for a more extensive set of functions then it should be negotiating this directly with the MC. The extent of investment in metering capability will be determined by the value that the end consumer places upon that investment.

Similarly, under the competitive framework being developed, distribution businesses should be negotiating with the MC to obtain the additional services they require. This has the benefit of creating a price signal for the distribution businesses: if the cost of the additional capability is not justified when compared with the

benefits that were anticipated, then it is a more efficient outcome for customers if the distribution business did not purchase those services or capabilities in the meter.

The 1 July 2017 start date is realistic

The 1 July 2017 changes will impact our business in multiple ways. At the minimum, we will have to develop the capability to provide new and replacement metering for our customers and we will have to have metering coordinators (MC) in place for the sites where we are currently the Responsible Person (RP).

Additionally, we will have to implement systems and processes that meet the new requirements from AEMO's new and amended procedures.

While these are significant changes for us we are confident that the 1 July 2017 is realistic.

Furthermore, if the start date is delayed then the market will be forced to develop under the current RP and Metering Provider (MP) / Metering Data Provider (MDP) requirements, or delay providing smart meter benefits to consumers while waiting for the MC role to begin.

Neither of these alternatives is in the interests of consumers. It is not in their interests for the benefits of the introduction of the MC role to be reduced as alternative structures evolve, nor is it in their interests for the benefits of smart metering to be delayed.

AEMO procedures development

The detail of how the draft rule determination's changes will be implemented will be expressed in the procedures that are managed by AEMO.

Keeping detail in procedures rather than attempting to include it in the Rules makes sense. This approach supports clarity in the Rules, rather than potentially confusing detail, and enables industry participants and other stakeholders to work closely together to develop the detail for industry operations.

However, we are concerned that AEMO's current approach is insufficiently industry led. AEMO is proposing to develop its own starting positions, which industry will be asked to comment on.

This has the potential to skew solutions towards those that suit AEMO rather than the industry, and fails to use the experience of key stakeholders who can develop credible starting positions.

With this in mind we propose that the AEMC puts in place a review group of key stakeholders that is tasked with ensuring that the procedures effectively implement the Rule changes. The AEMC should continue to be an active shareholder in the procedures development process.

If you have any questions concerning this submission, please contact James Barton, Regulatory Policy Manager on (03) 8807 1171.

Yours sincerely

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