20 December 2016

Mr. Ed Chan
Director
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Mr Chan

## RE: Improving the accuracy of customer transfers – Draft Determination (Ref: ERC0195)

ERM Business Energy welcomes the opportunity to respond to the Australian Energy Market Commission's (Commission) Draft Determination Paper on improving the accuracy of customer transfers (the Draft Determination).

## About ERM Business Energy

ERM Power Retail Pty Ltd, which trades as ERM Business Energy, is a subsidiary of ERM Power Limited, an Australian energy company operating electricity sales, generation and energy solutions businesses. Since launching in 2007, ERM Business Energy has grown to become the second largest electricity provider to commercial businesses and industrials in Australia by load[1], with operations in every state and the Australian Capital Territory. ERM Business Energy has increasing success in the small business market. www.ermpower.com.au

As ERM Business Energy does not retail to small gas customers our submission focusses on the implications for electricity customers.

## General comments

As a retailer to small business customers, ERM Business Energy places importance on ensuring our customers' experience with contracting and transfer is compatible with a high level of service. Therefore, we have followed this rule change with interest and support the Commission's objectives to enable the more efficient resolution of transfer errors and reduce the likelihood of such unforeseen situations having a negative impact on customers' perception of switching.

In our response to the Commission's consultation paper, ERM Business Energy provided strong support for the introduction of an industry address standard, which we believe could mitigate the majority of small customer erroneous transfers. We note however the address standard proposal has been rejected due to the Commission's perceived costs to the industry, outweighing the benefits to reducing delays and errors.[2] We find this decision disappointing as we maintain our view that a standard would improve the poor quality of address data currently in the Market Settlement and Transfers Solution (MSATS), that predominantly leads to erroneous transfers. Further, we suspect greater efficiency gains

[1] Based on ERM Power analysis of latest published financial information.
[2] AEMC 2016, Improving the accuracy of customer transfers, Rule Determination, 27 October 2016, Sydney pg. ii

would be realized over time with savings from a reduction in error management and improvements to the transfer experience for customers.

Notwithstanding our views on the benefits of an address standard, we support the objectives of the initial rule change request in establishing a clear process to resolve the issue of erroneous transfers, including those as a result of data or customer error. We note the Commission has proposed draft rules that differ from the original rule change request, in that they apply more widely to all transfers without consent and not just erroneous transfers. We believe the new rules will go some way to addressing the concerns highlighted in our previous submission, including the need for placing clearer obligations and timeframes on parties to resolve incorrectly transferred customers. However, ERM Business Energy considers the drafting may still create a sub-optimal outcome when the identifier of the issue is the new retailer (not the customer) and obligations are not clearly placed on the previous retailer to initiate a resolution. We regard the effectiveness of the draft rules in meeting the desired objective will only be achieved if the rules are not limited to certain identifying parties. Rather, the rules must ensure both retailers are sufficiently motivated to expeditiously return the customer to the previous retailer, regardless of the party who identified the issue.

ERM Business Energy has further concerns on the application of the de-energisation restriction under new sub rule 116 (1) (i) and does not support this rule. We believe this rule will not deliver the objective of the initial rule change request of mitigating erroneous transfers and will only create an unacceptable compliance risk to retailers, beyond their control. Ultimately, any additional administrative tasks in de-energisation processes will add further costs to all customers.

We detail our concerns with the draft determination below. We would be happy to discuss these issues with the Commission. Please contact me if you would like to discuss this submission further.

Yours sincerely,

[signed]

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## Issues with application of a 'void transfer'

a. Error identified by the new retailer

ERM Business Energy submits that the draft rules do not contemplate where the new, winning retailer has identified a transfer without explicit informed consent. Rather, the proposed rules are limited to placing obligations where a retailer (other than the new retailer) or incorrectly transferred customer identifies the error. As a result, customers may be inconvenienced in having to initiate contact with a retailer when a new/ winning retailer may have been able to efficiently resolve the issue prior to customers' knowledge or involvement. We strongly suggest that the drafting of Rule 57A needs to capture the initiation by *either* retailer, to ensure cooperation between the retailers and providing an optimal outcome for all customers involved.

An example of where an initiator could be the new retailer may apply to 'unknown consumers'. In our submission to the consultation paper, ERM Business Energy highlighted our experience in complex erroneous transfers involving unknown consumers. These result in a poor outcome for the customer and take the most time and resources to resolve (due to the lack of motivation by the original retailer to transfer the customer back). An example may be the following:

a. Customer A, provides consent and signs a contract with Retailer A and Customer A provides incorrect NMI information to transfer (NMI is actually for customer B).
b. Retailer A identifies that Customer B has been incorrectly transferred to it instead of Customer A.
c. Customer B is an unknown consumer (or vacant premise).
d. Retailer A notifies Retailer B (previous Financially Responsible Market Participant of Customer B) of the void transfer and requests that Retailer B initiates the transfer back.

This scenario is not contemplated by the draft rules under section 57A; that is, where a customer (Customer B) has not made a complaint to a retailer and the new retailer has discovered the void transfer. In such cases, the absence of a customer complaint does not reduce Retailer A's exposure and need for resolution.

**Recommendation**

Ensure new/winning retailers have the ability to trigger obligations under Rule 57A if a void transfer is identified (where there is an absence of customer complaint) which places an obligation on the previous retailer to take the customer back. The transfer back may even occur before the knowledge of the customer (who was transferred in error) and would create minimal impact on the customer.

b. Notices with a void transfer

ERM Business Energy has identified issues with the concept of incorrectly transferred customers moving back onto the previously existing contract with their previous retailer. Issues may arise if a price or tariff change has occurred during the period they were with the incorrect retailer. On the customers return to the previous retailer, the customer may have missed notifications such as price changes or tariff reassignments. This may question the ease with which the customer can resume the previous contractual arrangement. We suggest that previous retailers' obligations for sufficient notice periods of variation may need to be waived to consider the retrospectivity of transfers in this scenario.

We also submit that the previous retailer's obligations for notifying a customer under rule 48 should not apply if the customer's fixed period contract has expired while the customer has been incorrectly transferred away (as considered by new sub rule 57A (5) (a) (i)).

**Recommendation**

Ensure notice obligations on retailers take into account retrospectivity of transfers and customers resuming contractual arrangements. Hence remove obligations of notice requirements, such as for rule 48.

## Issues with application of the restriction on de-energisation within 12 months of transfer without consent

ERM Business Energy believes that the restriction to de-energisation as contemplated by new sub-rule 116(1)(i) is problematic and will not achieve the desired outcome of mitigating a de-energisation of an erroneously transferred customer. We understand that the Commission's intent of this sub-rule is to ensure those customers who have transferred without consent and who are disengaged with customer communications from retailers are not subsequently de-energisation by the new retailer. Paradoxically, the customer's disengagement would see new rule 57A being ineffective, as a disengaged customer will not complain of the void transfer (and therefore may not be uncovered as void).

Transfer in error is most likely a result from address data errors, inconsistencies and ambiguities within MSATS or human error by either the customer or the retailer, in quoting or recording a National Metering Identifier (NMI) during the transfer process. Transfer without consent is an outcome of a site transferred in error. By focussing on the consent as the means of detection and mitigation, the Commission will not achieve the desired effect of identification of a void transfer and prevention of de-energisation. A consent record for the transfer will exist and until a void transfer is identified, a retailer will not have the ability to detect that the consent record does not match the NMI and may de-energise the site for non-payment.

Retailers already have robust consent processes and recording as required by consumer law and the National Energy Retail Law and Rules. This new rule of an additional check for consent will add a costly layer of administration for no gain. Even if the retailer checks consent records prior to de-energisation for non-payment they would have potentially found consent for what retailer believes is the customer for the site (but is actually the consent record of the customer who intended to transfer). If the site is de-energised, the retailer would then be in breach of this obligation without any means of identifying that a breach may occur, and with the breach being beyond its control. Worryingly, the retailer would be in breach under the new proposed sub-rule despite acting in good faith on information presented.

De-energisation is more likely to unfold in this situation if the unknown consumer has failed to respond to the retailer's new contract pack, welcome letters, final billing notices from the previous retailer and subsequent notices and attempts to contact for non-payment, since the site transferred. We suggest that such complex erroneously transferred issues such as that described are rare, but inclusion of this new rule 116 (1) (i) to cover those few customers profoundly disengaged will not reduce the likelihood of such issues nor address their risk of de-energisation.

If rule 116 (1) (i) is adopted in its current form, the situation for a retailer in managing an unknown customer that has transferred in error is even more problematic. Even if the site transfer is discovered to be void, the new retailer has no remedy available to it. It must continue to supply an unknown customer that potentially does not pay for energy and has not engaged to identify and resolve an

erroneous transfer. We strongly suggest new retailers must be able to request old retailers to transfer back the customer expeditiously. Importantly, de-energisation should still be permissible for retailers that have attempted to engage a customer in good faith, despite the customer ignoring all correspondence (and ignoring the fact that there has been an absence of billing from the previous retailer). Furthermore, we seek to clarify that Rule 115 should not be subject to the restriction under 116 (1) (i) if a customer has moved into a site erroneously transferred.

**Recommendation**

Without the introduction of an address standard, we believe the Commission should focus the new rules on improved resolution processes under new rule 57A and not on wasting administration costs on reviewing consent records which will not expose erroneous transfers nor mitigate de-energisation of such customers. Importantly, this will be achieved by ensuring new/winning retailers also have the ability to trigger obligations under Rule 57A.

If new rule 116 (1) (i) must be included, it should place an obligation on retailers when an erroneous transfer is discovered. The rule should not expose new retailers to customers who refuse to engage or the lack of action by previous retailers to transfer the customer back. Hence:

- Restriction sub-rule 116 (1) (i) should **only** apply if a void transfer has been identified under the process of rule 57A (including the accommodation of the identification by a new retailer); and
- Rule 115 should apply despite new sub-rule 116 (1) (i) allowing retailers to de-energise customers who refuse to supply identification when occupying a site that had previously transferred without consent.

## Table Summary of issues with draft rules

| Rule / sub-rule | Issue/ clarification | Suggested amendment |
|---|---|---|
| New Rule 57A<br>Clauses (1) & (2) | These new rules contemplate the scenario where a customer or old retailer identify a void transfer and must resolve BUT does not contemplate a void transfer identified by the new retailer. | Rule 57A needs to capture the initiation by either retailer. Update subsequent obligations on the old retailer under (4) to accommodate a request from a new retailer. |
| Rule 116 (1) (i) | New Rule 116 1 (i) should apply if the site has been identified as erroneously transferred (without consent).<br>Clause 115 should remain available to new retailers for customers that refuse to engage and provide ID despite having transferred erroneously. | Clause 116(1) (i), applies only where a site has been identified as transferred without consent under 57A |
| Other drafting issues: | | |
| New Rule 49 1A<br>Provision of retailer services under a different customer retail contract is taken to have never commenced. | Drafting - New rule should apply to a different customer retail contract from **another retailer** not just a different retail contract (under the same retailer) | …is taken never to have received customer retail services under a different customer retail contract from another retailer |
| New Rule 70 (1)<br>Provision of retailer services under a different customer retail contract is taken to have never commenced. | Drafting - New rule should apply to a different customer retail contract from a **another retailer** not just a different retail contract (under the same retailer) | …is taken never to have received customer retail services under a different customer retail contract from another retailer |