

21 May 2015

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

Dear Mr Pierce

The NSW DNSPs Response to the *Expanding competition in metering and related services in the National Electricity Market Draft Rule Determination*

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 *Expanding competition in metering and related services in the National Electricity Market Draft Rule Determination*.

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 we are mindful to highlight any issues which could be clarified before the finalisation of the rule change.

NNSW position

In submissions and public workshops we have argued from a policy perspective that it is important 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.

We still have some residual concerns from a policy perspective on these issues, particularly the potential for the MC to exert market power. Greater clarification could be provided on the transitional arrangements, particularly as the draft rules are premised on a short transitional period whereas we believe that the transitional period could be quite lengthy. As noted by Metropolis Metering Services Pty¹, the mandated rollout in Victoria took five years even with no commercial or customer impediments. As such, the transitional period for a market led roll out in NSW is likely to be significant.

We submit that questions of clarity are important from a customer outcome perspective as envisaged by the National Electricity Objective (NEO) but also to minimise compliance risks for DNSPs and other market participants. This is because the draft rules will require the DNSP to comply with the revised obligations which are imposed on it as the initial MC at the same time as requiring it to relinquish (or negotiate access for) some of its previous roles and responsibilities in metering and network services.

There are also some provisions which potentially render DNSPs unable to perform, or unable to avoid breaching de-energisation, re-energisation and supply interruption obligations under the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR) as well as some questions on whether the DNSP will have access to metering data to enable it to calculate a network bill, provide access to customers and be able to meet jurisdictional safety requirements. As such, we believe that there is scope to amend the draft rules to clarify the position between the various participants in metering going forward.

¹ Metropolis Metering Service Pty Ltd response to AER Alternative approach to the recovery of the residual metering capital costs through an alternative control services annual charge, p 2

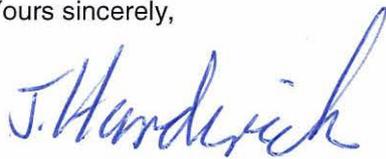
In light of the above, our submission is largely focussed on drafting issues which may be considered in a more preferable rule (Attachment A). However, as we do consider that the market power issue is significant (as this impacts on many of our policy positions listed above), we therefore make some specific policy and drafting improvements for the AEMC's consideration on this issue (Attachment B).

Next Steps

We understand that the AEMC is considering a legal drafting forum for stakeholders. The NSW DNSPs would be very interested in participating in this forum to ensure that the drafting is clear and proportionate, promotes the achievement of the NEO and does not give rise to compliance risks for DNSPs and other market participants.

If you have any further queries or would like to arrange a meeting to discuss our submission please contact Ms Alex Dean, Acting Group Manager Network Technology & Innovation at Networks NSW on (02) 9269 7210 or adean@ausgrid.com.au

Yours sincerely,



John Hardwick
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Attachment A: NSW DNSPs' comments on the Draft Rules and Draft Determination
Attachment B: The need for light handed regulation – Access to network services

Attachment A – NSW DNSPs' comments on the Draft Rules and Draft Determination

The initial metering coordinator role

The result of the transitional provisions is that the Local Network Service Provider (LNSP) continues to have rights and obligations in relation to existing metering infrastructure. The transitional provisions are likely to be lengthy in NSW.

When a LNSP's metering coordinator obligations cease

Another MC in relation to type 5 or 6 metering installations

The draft determination indicates that the draft rule does not prevent a retailer from appointing a party other than the DNSP as the MC for existing type 5 and 6 metering installations. It further provides that while the retailer may replace the LNSP as MC, neither the retailer nor the incoming coordinator will acquire the existing meter. As such, a new coordinator would only be able to take over from the LNSP in relation to type 5 or 6 metering services if it reached an agreement to lease the existing meter, or appointed the LNSP as the metering provider.

However, the draft rules do not clearly address this possibility as there is no specific process for the incoming MC assuming responsibility for type 5 or 6 metering installations purchasing or leasing an existing meter. In addition, there is no specific process in the draft rules for the termination of the appointment of the LNSP in the event the AER reclassifies type 5 and 6 metering services. We submit that the draft rules should provide for these situations as noted below.

Replacement of a faulty meter

We understand that the LNSP will continue to be responsible for the maintenance of a type 5 or 6 metering installation (r7.3.1(a)(1)). The position in the draft determination is that where a type 5 or 6 metering installation is found to be faulty, the LNSP's appointment or deemed appointment as MC under the transitional provisions will cease².

The draft determination³ addresses the retailer's responsibilities in relation to appointing a MC, and the additional time that may take as compared to now:

'The Commission recognises that the requirement for the DNSP (where it is the initial Metering Coordinator under the transitional arrangements) to notify the retailer and for the retailer to appoint a new Metering Coordinator may introduce a time lag into the process. However, it is reasonable to expect that retailers will prepare for fault scenarios by putting in place arrangements with DNSPs and other parties undertaking the Metering Coordinator role before the new Chapter 7 of the NER commences. This will enable it to arrange installation of a new meter within the existing regulated timeframes.'

These arrangements will be very important as the LNSP will be required to fulfil the obligations of MC for a connection point until a new MC is appointed (r11.78.7(h)). For example, under r7.8.10 the MC must ensure that if a metering installation malfunction occurs, repairs must be made no later than 10 business days after the MC has been notified of the malfunction.

The AEMC envisages that once an LNSP becomes aware that a metering installation at a connection point needs to be replaced, the LNSP will need to notify the FRMP, and the FRMP will have to appoint a new MC which will in turn have to replace the metering installation at the connection point. All of those actions will need to be undertaken within 10 business days of the LNSP becoming aware of the metering installation malfunction.

² AEMC 2015, Expanding competition in metering and related services, Draft Rule Determination, 26 March 2015, Sydney pg. 203.

³ Ibid.

If the FRMP does not appoint a replacement MC within that 10 business day period, then the LNSP remains the MC responsible for complying with r7.8.10(a)(2) and installing a new metering installation which not only creates some compliance risks (as we outline below) but also necessitates that the DNSP retain the internal capabilities (and costs) for such a situation. This is because there mere fact that a type 5 or 6 customer at a connection point changes retailer does not impose a requirement on the new retailer under the rules to appoint a new MC to replace the LNSP.

It is not until the FRMP either elects to roll out a new meter deployment and the customer agrees, or the meter is faulty and requires replacement that the LNSP can be relieved of its responsibility to be the MC by the FRMP appointing a new MC. As a result, the NSW DNSPs consider that in any circumstance a type 5 or 6 meter requires replacement that the FRMP should appoint an MC which would be responsible for arranging and replacing the type 5 or 6 meter.

At present, the draft rule does not contain any rules or provide for any B2B procedures that would govern this event or compel the FRMP to appoint an MC – this would be particularly problematic if a population of meters failed. The rules also require clarification to ensure that the initial MC is not responsible for the replacement of type 5 or 6 meters with type 4 meters and is only responsible for notifying the FRMP of the required replacement who would then assume responsibility for appointing an MC. If the retailer did not meet the 10 day requirement, a civil penalty could be imposed. In the event that a population of meters fail, the retailer should appoint a MC to replace the meters within a reasonable time period – to be determined by the Australian Energy Market Operator (AEMO).

Alternatively, we submit that the rules should provide for a reactive like for like (i.e. type 5 or 6) replacement if there is going to be a delay in a FRMP appointing an MC and supplying a type 4 meter. For the record, LNSPs should not be obligated to hold stock of type 4 (Minimum Functional Specification) meters.

In summary, we submit that there should be specific processes in the draft rules for:

- (a) the termination of the appointment of the LNSP in the event the AER reclassifies type 5 and 6 metering services;
- (b) an incoming metering coordinator assuming responsibility for type 5 or 6 metering installations purchasing or leasing an existing metering installation from the LNSP; or
- (c) the automatic termination of the LNSP's appointment as the initial metering coordinator in the event the type 5 or 6 metering installation is found to be faulty so as to need replacement, or
- (d) a reactive like-for-like replacement in certain circumstances.

Furthermore, there remains some uncertainty in the transitional provisions as they do not expressly provide that the LNSP is *not* required to take on the role of MC where type 5 or 6 installations are replaced. While the draft determination refers to the role of 'initial metering coordinator', that is not reflected in the draft rules. We submit that the rules be amended to clarify the MC/initial MC distinction.

We note that there appears to be a drafting error in r11.78.7(h). The two alternatives as to when an appointment will come to an end are connected by the word '*and*', which indicates they must occur together. In the draft determination the two subsections are described as alternatives⁴. It can be assumed that the AEMC intended to use the word '*or*' rather than '*and*' at the end of r 11.78.7(h)(1). This error should be corrected. The word '*and*' at the conclusion of sub-rule 11.78.7(h)(1) should be replaced with the word '*or*'.

⁴ AEMC 2015, Expanding competition in metering and related services, Draft Rule Determination, 26 March 2015, Sydney pg. xo, 45, 100)

Ring fencing

The draft determination provides some guidance to the AER in respect of DNSPs acting as the initial MC. The draft determination suggests the AER should consider whether different ring-fencing obligations should be imposed on a DNSP that operates in a competitive segment of the market, compared to a DNSP which merely provides direct control metering services as the initial MC⁵.

It should be noted that the way the ring-fencing guidelines are drafted has the potential to impose unnecessary costs on the DNSPs. Particularly in the case where a distinction is drawn between a DNSP competing in the broader market for metering services as opposed to a DNSP operating as a MC only for existing type 5 and 6 installations.

The draft rules should provide for the avoidance of doubt that a DNSP's activities as the initial MC for type 5 and type 6 metering installations pursuant to r11.78.7 are not activities which have to be separated from the provision of other direct control services under the Distribution Ring Fencing Guidelines ('Guidelines'). In addition, as the LNSP will be required to make an offer to act as the MC in respect of transmission connection points this should also be excluded.

We also are concerned that the AER has expressed a preference to imposing onerous ring fencing obligations on DNSPs which may be based on the criteria in 6.17.2(b) of the NER, which sets out a list of obligations that may be included in the ring fencing guidelines. We are concerned that the AER may have misinterpreted the meaning of this clause as it does not require the AER to impose all of the listed obligations.

We submit that the AEMC should propose additional drafting that includes a requirement for the AER to specify the potential for anti-competitive behaviour or unfair advantage that the AER is seeking to address through ring fencing and then place an obligation on it to review existing regulatory mechanisms (such as the NECF, Competition and Consumer Act 2010 (Cth)) to determine whether further regulation is necessary before it can consider the criteria in 6.17.2(b) and decide the appropriate form of ring fencing.

We also believe that the final determination would benefit from some policy guidance in relation to the purpose and content of the Guidelines. We would like to see the AEMC explicitly state that ring fencing should be limited to circumstances where a DNSP is participating in both a competitive market as well as a monopoly market and is able to use its position in the monopoly market to provide it with an unfair advantage over other participants in the competitive market, thereby impacting competition.

We urge the AEMC to note a distinction between concerns regarding unfair competition and efforts to limit competition in the market; Guidelines are only required to address the former and should not be capable of extending to restrict competition and participation in the market by DNSPs to the detriment of customer choice as this would not be consistent with the NEO. The role of ring fencing should be to provide guiding principles for how DNSPs should behave in contestable markets; ring fencing is certainly not appropriate for type 5 and 6 metering services provided as part of a DNSP's initial MC role.

Key questions the AER should consider in deciding whether to impose a ring fencing obligation are:

- Are existing regulatory mechanisms (such as the NECF, Competition and Consumer Act 2010 (Cth)) sufficient to ensure competition in the relevant market?
- Does the proposed ring fencing obligation assist in preventing anti-competitive behaviour?
- Does the proposed ring fencing obligation impose a significant cost burden on DNSPs?
- Does the proposed ring fencing obligation limit competition and participation in the market by DNSPs to the detriment of customer choice?
- Is the cost of imposing the proposed ring fencing obligation justified in terms of the benefits that will accrue to the customer in the form of increased competition?

It would also be prudent for the AER to consider the costs of ring fencing such as:

⁵ Ibid, p 236.

- Initial set-up costs associated with business reorganisation including process and system changes;
- Ongoing operational costs including compliance and monitoring costs, and losses of economies of scale; and
- Limits on business choice – costs incurred by restricting DNSPs from selecting their own business structure.

Access to Data

DNSPs require metering data for the purposes of network billing. A DNSP is entitled to access such data under 7.15.5(a)(5), however the NSW DNSPs require clarification of whether this access will be subject to commercial terms and conditions. Under clause 7.6.1(b) of the draft rule it appears the MC will be able to supply services including access on commercially agreed terms and conditions:

(b) In accordance with the Rules and procedures authorised under the Rules, a Metering Coordinator may supply services with respect to a metering installation including access to the services provided by the metering installation and metering data from the metering installation on terms and conditions (including as to price) to be commercially agreed between the Metering Coordinator and the requesting party.

The NSW DNSPs are concerned this will extend to the provision of metering data to enable a DNSP to calculate a network bill. This is a key revenue risk if an MC seeks to impose unreasonable terms or conditions on the provision of such information. Whilst 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 readily available.

The DNSPs consider access (the manner and the terms and conditions) to this service for network billing purposes should be regulated in the rules or a relevant B2B procedure and excluded from the commercial negotiation framework. 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, this should be expressly stated in the Rules.

Customer access to meter data

The NSW DNSPs note the recent amendments to Chapter 7 of the NER enabling customer access to metering data. Currently, as required by clause 7.16 of the existing rules, AEMO is developing metering data provision procedures which must be published by 1 September 2015, and effective by 1 March 2016. In light of the significant changes anticipated by this rule change, the NSW DNSPs recommend AEMO be afforded additional time under the rules to develop the procedure in order to reflect the new market participant roles and obligations.

The draft determination and rules outline the persons who may be granted access to energy data or receive metering data, NMI standing data, settlements ready data or data from the metering register under clause 7.15.5(a). However, it appears FRMPs and DNSPs will maintain the responsibility to respond to retail customer requests for metering data under 7.14(c)(4).

The NSW DNSPs consider it would be worth clarifying these arrangements and which party will be responsible for providing customer access to metering data. We consider that the MC would be better suited for the responsibility of providing customers access to their meter data. Under AEMO's metering data provision procedures a customer may request, and be entitled to, metering data in a form and format not readily available to a DNSP that may only be accessing metering data for a discrete purpose (for example, network billing or monitoring) on commercially agreed terms or in accordance with any rules or procedures (if implemented in the final decision as recommended). The DNSP in such circumstance would be required to liaise with the customer's MC and potentially previous MC(s) to obtain the required data which is likely to result in additional time and costs to the customer. Whereas, an MC is more likely to have the systems in place to readily obtain and provide such data as providing access to advanced metering services and data will be a core function of an MC.

Alternatively, if the DNSP retains this responsibility, the NSW DNSPs consider there is a risk that the MC (or previous MC of the customer in certain circumstances) may impose unreasonable terms or conditions on the provision of such information. Similar to access for network billing purposes, the DNSPs consider access (the manner and the terms and conditions) to this service for customer access to meter data should be regulated in the rules or a relevant B2B procedure.

Disconnection/reconnection

The draft rules contain a significant number of changes in relation to the process for disconnections and reconnections which are likely to increase the compliance and unnecessary administrative burden on DNSPs (and retailers). For example, the operation of proposed NERR r106A will rely on robust communication procedures between retailers and DNSPs. This is because the provision is complicated as a result of the ability of both retailers and DNSPs to arrange for de-energisation. The different permutations are as follows:

1. if the retailer does not arrange for the DNSP to re-energise, the retailer must notify the DNSP that the premises have been re-energised;
2. however, the retailer must arrange for the DNSP to re-energise the premises if it was the DNSP that in fact de-energised the premises;
3. if the DNSP has re-energised a customer's supply, the DNSP must notify the retailer that the premises have been re-energised; and
4. however, a DNSP must not re-energise a customer's supply if the premises were de-energised by a retailer, unless the retailer requests the DNSP to do so.

The tripartite relationship between FRMPs, MCs and DNSPs regarding connection and disconnection in draft rule r 7.3.2(h)(3) and proposed rr 104 and 106A of the NERR require robust procedures and a clear audit trail in relation to communications to demonstrate compliance; there are significant risks (including substantial civil penalties) for DNSPs (and retailers) should they fail to comply with the more complicated re-energisation requirements under NERR 106A.

The proposed regime in relation to disconnections and reconnections also has significant consequences in relation to life support obligations, which are considered further below.

Life support

In addition to the reliance on commercial arrangement being potentially problematic with respect to a DNSP gaining access to advanced metering services it also impacts on the DNSP's ability to gain access to remote disconnection and reconnection services from a MC. The DNSP will have to negotiate the commercial terms of access including the price of these services.

The proposed amendments to notification requirements in respect of de-energisation and re-energisation (r 104, 106A), as well as increased information sharing requirements between DNSPs and retailers (r 125(2)), are said to address potential risks. However, it seems clear that the draft rules which will enable retailers to arrange de-energisation increases the risk of inadvertent disconnections of premises with life support requirements.

In addition, there appears to be several shortcomings in the way in which the life support requirements have been amended. The effect of the broader amendments in relation to disconnections is to place the retailer and DNSPs on an equal footing in respect of their ability to de-energise/arrange to de-energise a customer's premises remotely. However, the record keeping requirements for a retailer are arguably less stringent than the requirements imposed on a DNSP. In particular:

- A DNSP must ensure that registration details under rule 125 in relation to life support equipment are kept up to date (r 126(1)). There is no such obligation on retailers. Significantly, the obligation on DNSPs is a civil penalty provision.

- A DNSP is able to request a customer whose premises have been registered, as requiring life support, to inform them if the person who requires the life support equipment has vacated the premises or no longer requires the equipment (r 126(2)). Retailers do not have an equivalent power under Part 7 of the NERR.

The effect of this is that life support equipment registers maintained by retailers and DNSPs are more likely to be inconsistent – particularly where the DNSP is required to keep those details up to date and is empowered to request information from customers. This distinction also increases the likelihood of inadvertent de-energisation and ignores the fact that it is generally retailers who provide the life support information to the DNSPs in the first place.

Furthermore, there appears to be a disparity between the obligations on DNSPs and obligations on retailers under the draft NERR. This is in circumstances where retailers now have the ability to remotely de-energise small customers. The NSW DNSPs submit that further changes should be made to the NERR to correct this imbalance.

Planned Interruptions

Draft rule 91A of the NERR 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 carry out their respective obligations. However, in doing so, it assumes that the MC will be directing the DNSP, who will be required to carry out the interruption and subsequently restore supply.

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 by Level 2 Accredited Service Providers (ASP) (who carry out all tasks involved in installing a new meter including the required isolation work⁶) and it 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 metering coordinator 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;

In addition to the above, supply interruptions initiated or caused by the MC should also be excluded from DNSP performance incentive schemes. The AEMC final determination should provide commentary on this issue.

Status of Accredited Service Providers (ASPs)

The AEMC notes that the NSW government is to review the operations of the ASP scheme in light of the proposed changes to the NER and NERR, and make any necessary amendments to the regulatory regime as part of the implementation of the draft rule⁷. This process is to take place by 1 July 2017. As such, we note that the AEMC appears to have delegated to the NSW Government the task of reconciling the ASP

⁶ 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.

⁷ AEMC 2015, Expanding competition in metering and related services, Draft Rule Determination, 26 March 2015, Sydney pg. 203, p 85.

scheme in NSW with the draft rule. We outline a number of specific concerns regarding the interaction between the ASP scheme and new metering regime.

Customer appointment of metering providers

The draft rules preserve the mechanism in the current rules which allows a customer (being 'another person') to appoint a metering provider for the provision and maintenance of a metering installation (r 7.3.2(a)(2)). The MC is required to enter into an agreement with anyone so appointed for the provision and maintenance of the metering installation (7.3.2(b)(ii)). We would expect that such an agreement would include the supply of meters for installation to ASPs but consider that given the new competitive environment such an obligation should be expressly imposed on MCs in the draft rules. We submit that the draft rules should clarify that a MC must agree to supply meters to a metering provider as part of the terms and conditions of an agreement pursuant to r 7.3.2(b)(1)(ii).

Chapter 5A

At present the installation of meters is part of the Chapter 5A process (although Chapter 5A does not apply to contestable services in NSW (cl 9.15.2)). The draft rule proposes to amend the definition of 'connection services' to specifically exclude the service of providing, installing or maintaining a metering installation. However, there is a practical question as to how the new metering regime may impact upon the Chapter 5A process which at present does not require any retailer involvement until immediately before energisation (r 5A.F.7).

Under the draft rule, prior to the installation of a meter the FRMP will need to have appointed MC to the connection point and the MC will need to have entered into an agreement with the ASP selected by the customer. This additional layer of administration has the potential to unnecessarily complicate and delay the existing Chapter 5A process in NSW.

The draft rule should include transitional provisions to ensure that any Chapter 5A connections commenced but not completed as at 1 July 2017 can be completed under the current regime.

Jurisdictional safety obligations

While we understand that the AEMC is delegating safety issues and compliance with the new regulatory arrangements to jurisdictional safety regulators we are mindful to highlight a couple of issues that the AEMC could consider further in its final determination.

Under the Electricity Supply (Safety and Network Management) Regulation 2014 the NSW DNSPs must, as part of our Electricity Network Safety Management System, address the safety impacts of a customer's installation on its network including the connection, disconnection and reconnection of customer installations and metering installations. This would imply that the rights and obligations of DNSPs and MCs under proposed rule 91A, will therefore necessarily need to be expressly subject to compliance with all relevant jurisdictionally based technical and safety requirements. We submit that this is another reason to remove rule 91A.

The NSW DNSPs are concerned about the responsibility of DNSPs in the event of a catastrophic event at a metering installation that we are no longer the MC for, for example a house fire that might result in loss of life.

Under the *Electricity Supply Act 1995*, clause 29 states:

29 Electricity meters

(1) A distribution network service provider may require the installation of such electricity meters as it considers necessary to ascertain the quantity of electricity supplied to or received from a customer.

(2) The position and standards of installation of electricity meters are to be as determined by the distribution network service provider.

We understand that the NSW Government will have to review the existing jurisdictional framework governing DNSPs to determine whether any of the DNSP's existing obligations should be amended in light of the proposed rule change, including the example above.

The proposed rule change will significantly constrain a DNSP's ability to exercise these powers with respect to customers for whom a MC other than the DNSP is appointed. As a consequence any obligations DNSPs have as a result of these powers will need to be similarly curtailed. This potentially represents a major change in the traditional roles and responsibilities for DNSPs in NSW.

Cyber security

The NSW DNSPs are extremely concerned about the implications for supply security as a result of any cyber compromise of either market systems, MC systems or Meter Provider (MP)/Meter Data Agency (MDA) systems with malicious intent. Given the new meters will have the potential to individually disconnect customers; a compromise of systems could allow the remote disconnection of large numbers (potentially millions) of customers with similar impacts to a large scale loss of supply.

Further, if this were to be through compromise of MP/MDA systems providing direct access to the meters then it is likely that this could be done in such a way as to not be remotely recoverable (for example, through changing password/firmware/IP addresses) with the only way to restore supply being a site visit to millions of individual customers to physically replace/bypass the meters. This scenario would result in extremely long periods without power – a supply security risk significantly greater than faced to date where restoration of supply can be undertaken within a timely fashion. The NSW DNSPs suggests that this risk is of such a significant magnitude that it warrants Rule provisions to explicitly require AEMO to put in place processes to audit, test and enforce cyber security with appropriate enforcement powers.

Civil Penalties

The draft determination recommends the addition of several civil penalty provisions, along with clarifying in some rules the party to which the provision applies. We note that there are new civil penalties proposed on LNSPs around the installation and use of a network device at a metering installation (clause 7.8.6(b)-(c)).

While we note that any change in respect of civil penalty provisions under the NER must be made by regulation we submit that new civil penalties should not be made until the review of the metering rule change outcomes in three years. This is important as a number of the subordinate documents will not have been finalised and will in themselves likely to be subject to civil penalties.

Other issues

National Measurement Act

In NER 7.8.8(c) special mention is made of the obligations of Type 6 metering installations being in accordance with the National Measurement Act – it should apply to other relevant metering installation types as well.

Metering Provider Registrations

In S7.2.2.1, the categories of registration for (Metering Provider) accreditation 4M, 4A and 4S are identical. We also note that Metering Provider category 4A is the same term as the metering installation category 4A. For clarity, this ambiguity should be removed or the term renamed.

Naming convention

The AEMC's draft rule provides that new meters installed that accord with the minimum functionality specifications will be referred to as a "Type 4" metering installation. The NSW DNSPs note type 4 metering installations currently exist as a metering installation type. This may create unnecessary confusion and complexity in managing a metering population. It may also create additional costs if the existing type 4 metering installation population must adhere to the minimum functionality specification from the effective date.

The NSW DNSPs consider the existing type 4 meters should be exempt from adhering to the minimum functionality specification. Irrespective of this, there may be pre and post effective date Type 4 meters which will need to be separately identified and managed.

The NSW DNSPs suggest that a new, unique naming convention is used to avoid any confusion and administrative complexity. Type 4A (and Type 4B for type 4A meters under the draft rule) may be an appropriate amendment or Type 8. We note that naming is important in so far as it enables DNSPs and Retailers to be able to identify through market systems (MSATS) which meters comply with the minimum functionality (new meters) and which meters do not (legacy Type 4 meters and potentially large customer Type 4).

Time settings

There appears to be a drafting error in Table S7.4.3.1 as it applies to type 5 meters (page 83). The reference in the current rules (Table S7.2.3.1) to '±20' has been omitted. More significantly, there is no reference in Table S7.4.3.1 to Item 3a, despite the fact that Item 3a continues to be described in the text following the table. The text of Item 3a has been amended slightly as between the current rules and the draft rules. The omission of references to '±20' and 'Item 3a' in Table S7.4.3.1 should be corrected.

We note that there also appears to be a minor drafting error in r 7.10.5(a). The only difference between draft r 7.10.5(a) and the current r 7.12(a) is that the term 'installing' has been italicised. 'Installing' is not a defined term, either under the current rules or in the substituted/new definitions in the draft rules

'Telecommunications network' definition

The NSW DNSPs question the suitability of the definition of 'telecommunications network' and, in particular, if the definition is appropriate considering communications for remote access will in all likelihood be conducted via a virtual private network (VPN). While the term 'telecommunications network' is not directly referred to in the provisions regarding security, the network is an integral feature in order to facilitate remote access.

The definition is listed as a substituted definition in Schedule 4. However, it has not been amended in any meaningful way. It provides that a telecommunications network means:

'A telecommunications network that provides access for public use or an alternate telecommunications network that has been approved by AEMO for the *remote acquisition of energy data*.'

We consider that the definition of 'telecommunications network' is unclear. It is not obvious what is meant by the phrase 'provides access for public use', nor is it clear whether it appropriately captures all potential uses of a VPN.

The *Telecommunications Act 1997* (Cth) defines a telecommunications network as 'a system, or series of systems, that carries, or is capable of carrying, communications by means of guided and/or unguided electromagnetic energy' (s 7). This broad definition will capture a VPN and can be adjusted to include an AEMO approved alternate network.

A straightforward and broader definition of 'telecommunications network' could be adopted in the final Rules that is consistent with the *Telecommunications Act* such as:

'A telecommunications network is a system, or series of systems, that carries, or is capable of carrying, communications by means of guided and/or unguided electromagnetic energy, or an alternate telecommunications network that has been approved by the AEMO for the *remote acquisition of energy data*.'

'Small Customer' definition

There will be occasions where the definition of a small customer within the context of both the proposed rule and the National Electricity Retail Rules (NERR) is problematic. For example, in line with AS3000, a customer's installation may require the installation of a CT meter because the size of their service is greater than 100A for the purposes of maximum demand. However, from a total energy consumption perspective they may be defined as a small customer. CT meters will not be able to fulfil the minimum services specification as they cannot be remotely de-energised and re-energised. The NSW DNSPs suggest that there is a variety of means by which this problem can be overcome, for example, altering the definition of a small customer in the NERR to exclude those customers with CT meters.

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 characteristics⁸. 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 market⁹.

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 services¹⁰ (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.

⁸ AEMC 2015, Expanding competition in metering and related services, Draft Rule Determination, 26 March 2015, Sydney pg. 273

⁹ Ibid, pp 273-275.

¹⁰ 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*¹¹ 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.

¹¹ 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.