16 April 2010

mkin2711@bigpond.net.au

Telephone (03) 9017-3127

Marc Tutaan
Project Leader
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

By email: aemc@aemc.gov.au

Attention Marc Tutaan

Dear Mr. Tutaan

Proposed Rule Change Provision of Metering Data Services and Clarification of Existing Metrology Requirements Rule Change - Section 107 Notice ERC0092

I note the second notice of extension given by the AEMC on 15 April 2010 under section 107 of the National Electricity Law to extend the publication date for the Draft Rule Determination to 6 May 2010, on the basis of the complexity of the matters posed under the proposed Rule change at the instigation of the MCE.

I missed out on responding to the original proposal but note that there is an opportunity to respond to the Draft Rule Determination after its publication, for which a period of some two months is likely to be offered – refer to our recent telephone discussion on this matter.

I note this matter was not transparently discussed in the context of the extensive consultations undertaken in connection with the NECF Package and that there were many matters left without clarification or indeed any attention at all. All 41 submitters to the NECF2 package raised objections and concerns about gaps and the consultation processes, albeit that different groups of stakeholders had discrepant perspectives.

I wonder whether the AEMC is aware that a related inquiry is in hand by the AER regarding the Revised Access Arrangement Proposal from Jemena Gas Networks (NSW) Ltd.

Please refer to:

Consultation by the AER on the Revised Proposal by Jemena Gas Networks (NSW) Ltd

See AER/ACCC Gas Access Arrangements Appendix 12.2 Standalone and avoidable costs.

See especially Refer to the Revised Access Arrangements proposed by Jemena Gas Networks (NSW) Ltd Initial Response to Australian Energy Regulator's (AER) Draft Decision for the period 1 July 2010 to 30 June 2015.

See esp. Appendix 3b.9-Metering forecast capital expenditure—19 March 2010 Clause 1.8 and 1.8.1 pages 5 and 6 of 17 pages; and conflicting reports associated with outsourcing, perceptions of *"arm's length operations"* and the like.

There have been a number of public meetings and presentations, discussions, revisions, and questions asked regarding outsourcing arrangements, the question of the existence or not of related body status and the like which remain incompletely addressed, which will also have impacts on cost analysis matters.

Jemena Gas Networks (NSW) Ltd is seeking funding for expensive upgrade to WATER meters that they claim are part of the gas network and have referred to rodent activity and seriously damaged infrastructure that poses a fire risk. They are proposing remote readings.

I note on the smartgridaustralia website[1] from the description of services by industry participations delivering alleged benefits of AMI and Smart Grid initiatives for *"electric, gas and water utilities"* using e-meter technology.

For example emeter.com describes its services as follows:

www.emeter.com

With over 24 million meters under contract, eMeter enables electric, gas and water utilities to realize the full benefits of their AMI and Smart Grid initiatives, through the eMeter Smart Grid Management software suite. eMeter's flagship solution, EnergyIPTM, is being implemented by many leading utilities around the world and has been enhanced to support the specific requirements of the Australian National Electricity Market. eMeter has customers in Australia and New Zealand and a Sales and Support office in Sydney.

Jemena describes its services in this regard as follows:

Jemena http://www.jemena.com.au

Jemena is a leading, national infrastructure company that develops, owns and services a combination of major electricity, gas and water assets.

They deliver innovative infrastructure solutions that support the vital daily electricity, gas and water needs of millions of Australians. They manage over $8 billion worth of

[1] *www.smartgridaustralia.com*

Australian utilities assets and specialise in both the transmission and distribution of electricity and gas.

Together with UED, they are leading the rollout of the Advanced Meter Infrastructure program to just on 1 million homes and businesses in Melbourne and the Mornington Peninsula.

Jemena is owned by Singapore Power International.

On 19 March 2010, the AER received the revised access arrangement proposal for the NSW gas distribution network owned by Jemena Gas Networks (NSW) Ltd (Jemena). Responses to the revised gas access arrangement proposal by JGN Ltd are required by 28 April, giving an unreasonable timeframe given the huge number of documents to be studied. I cannot do justice to this as well as attempt a response to the ACL Explanatory Memorandum, Bill and Second Reading Speech, but am very concerned about developments.

Jemena Gas Networks (NSW) Ltd., which describes under 1.8, p5 of that appendix the use of water meters as follows:

"1.8 Water Meters: JGN has a population of hot water meters, usually located in apartment buildings that are used for network purposes.[2]*"*

As the water meters age JGN has experienced an increase in field failures for these meters. It has been JGN's experience that the accuracy of these meters deteriorates as they age.

As a means of ensuring that the accuracy of the population of meters is maintained and a cost efficient means of replacing meters, rather than waiting until the meters fail in the field JGN is instituting a water meter replace program.

As an initial starting position JGN has adopted an in service life of 25 years so as to minimise the cost of establishing the replacement program. JGN will continue to monitor the data of the performance of in field.

As of 2010, there were more than 8,000 meters older than 25 years. It is proposed that these meters are gradually removed over 2011-2014. In 2015, the number of units is much greater than in previous years. This is due to increase in number of water meters in apartments due for replacement in that year.

Even if some cables in a building were found to be sound, all meters in that apartment would be installed with RF heads to prevent having two incompatible systems within.

---

[2] Since it a Gas access matter and since there are absolutely no gas networks – provision is always direct and in these cases to a single gas meter on common property infrastructure by arrangement with the developer or owners' cooperation (body corporate). It is quite absurd to even use the term network and include water meters in this.

The benefit of installing the RF head is to continue to allow the remote reading of these meters. This is important because as noted above access to the meters is problematic and would result in less frequent reads of the customer's water meters.

This rate is very conservative and assumes that access to individual apartments would be relatively easy.

1.8.1 Radio frequency data loggers

Currently installed water meters are linked by cable to data loggers which report water consumption via telephone link. It is expected that many cables would be broken due to the aging process or rodent activity. Cable replacement would be impossible in existing buildings due to construction and fire protection. It is proposed to utilize a wireless system using radio frequency (RF) heads to replace cable data logging systems in such locations to continue remote billing."

These WATER and HOT WATER FLOW METERS are effectively posing as gas or electricity meters in multi-tenanted dwellings, apparently under the sanction of flawed policies at jurisdictional level that have been the subject of all of my public submissions to date to various arenas, including the ESC, AEMC, Productivity Commission, MCE arenas available on the RET website and the Commonwealth Treasury.

I leave aside for now the appropriateness of any arrangements being made by those responsible for energy laws to become involved in costing proposals by energy providers for upgrades and maintenance of water meters under energy laws and rules. This I believe is outside the parameters of energy laws and these instruments are being quite inappropriately used for the calculation of *"deemed"* gas or electricity consumption by end users of a heated water product.

I leave aside for the moment the question of *"metering and billing contractors"* under various models of *"asset management services"* involved, or the question of further artificially inflating costs that should not be incurred at all.

It concerns me greatly what may happen if maintenance matters are left in the hands of multiple distributors and other providers of "*metering and billing services"* each seeking to hold contractually responsible end-users of a composite water product for massive outsourced or in-houses services through *"asset management facilities."*

This leaves the contractual burden inappropriately allocated to end-users of a heated water product who are normally renting tenants in multi-tenanted dwellings, though some are owner-occupiers. The proposed Energy Retail Laws and Rules to be rubber-stamped through the Australian Parliament clearly refer to *"flow of energy"* in relation to sale and supply.

Mere ownership of water infrastructure does not mean ownership of water, nor a right to impose contractual status for sale and supply of energy (gas and electricity in this case) on recipients of heated water reticulated in water pipes. Under existing revised laws with more revisions to follow no-one can sell anything without first owning that commodity.

The original reasoning adopted by the ESC in 2004 when the *"bulk hot water arrangements were discussed"* were flawed in the first place. They sought to validate the provisions, which have been discrepantly adopted in other states by transferring the substance of the Bulk Hot Water Guideline into the Energy Retail Code in the illusion that the arrangements are consistent with generic laws and revised trade measurement provisions, subject to pending lifting of utility restrictions. To defy the intent and spirit and letter of such laws is failure to adopt responsible policy, and will leave providers of utilities at risk.

The Intergovernmental Agreement to avoid duplication and conflict appears not to have been embraced.

The proposed Energy Laws and Rules require adoption of existing jurisdictional provisions, thereby indirectly sanctioning provisions that are in direct conflict with the concept of *"flow of energy"* and the national measurement provisions regarding legal traceability, correct use of instruments, correct scale of measurement and the like.

By deeming end-recipients of heated water who receive no energy at all to be contractually obligated to energy providers of one sort or another is to fail to embrace existing laws and provisions and to adopt best practice.

The point is that these services are being delivered by either licenced energy providers or their servants, contractors and/or agents under energy laws governing gas and electricity in monopoly markets with the artificial perception being promoted that the choice exists through retailers. No such choice exists for those receiving heated water supplies in multi-tenanted dwellings.

The issue of competition has simply been ignored whilst the middle ends of the markets are considered without proper regard for what is happening at the wholesale end.

These matters are settled at the time of construction of buildings and are matters of contract between developers and/or landlords or owners' corporations at that stage. Retailers allocated site patches geographically pass on all costs that they inherit from distributor monopolies, who apparently own and manage water assets in addition to gas distribution services and electricity distribution and network services.

It is impossible to see how and why water meters can be part of a gas distribution network, though it is common knowledge that water meters are being used by energy providers to calculate the deemed consumption by end-recipients of a gas used to provide a heated water product. This topic is covered in great detail in several submissions including my submission to the NECF2 Second Exposure Draft (proposed National Energy Retail Law and Rules).

End consumers of heated water products are being unjustly and unfairly imposed with contractual status for alleged provision of an energy commodity that they do not receive at all. There are no redress resources and no proper guarantee provisions.

Massive supply and cost-recovery maintenance charges are being imposed on the wrong parties. The ESC's role in all of this has been highlighted and it may well be that inappropriate tariff arrangements were sanctioned without proper understanding of the issues involved.

I draw these matters again to the attention to the AEMC, since I do not believe that the MCE or AEMC has reflected on the implications of policies and provisions at national level that are inconsistent with the proposed national retail laws and rules with regard to flow of energy and proper contractual parties.

In addition there is the question of implications of revised generic laws with further changes pending, as well as trade measurement laws, climate change policies, technical and safety issues and unnecessary expenditure on upgrade to water meters for which the Jemena Group through one or other of its associated companies, of arrangements that are loosely referred to as outsourced metering and data services.

If any party should be contractually obligated for any metering and data services it should be the developer or Owners Corporation (Body Corporation) who originally requested the gas or electricity metering installation. Any arrangements as to ownership of water assets, including metering and associated equipment is an arrangement between provider and the controller of premises, normally once developer stage is passed, the Body Corporate, not the end user of heated water.

I am concerned that the MCE and AEMC are endeavouring to sanction by implication services that are unrelated to the sale and supply of energy. Changes to generic and trade measurement laws are very clear.

The National Measurement Institute is the sole authority on metrology matters and upholds the principles of legal traceability of commodities and services. For the purposes of current and proposed generic and other laws, electricity and gas are commodities and therefore are covered by the full suite of protections.

The Jemena Gas Networks (NSW) Ltd Revised Access revised proposal is pending the AER's final decision by 28 April is but the tip of the iceberg and my concerns extend much further to cost allocation principles generally both for electricity and gas in certain areas; to the ACCC's independent role in competition and consumer protection matters.

As to consideration those receiving heated water as a composite product under such conditions to be *"embedded"* this is absurd since no flow of energy ever enters the abodes of those deemed to be receiving gas.

Gas and electricity are commodities for the purposes of generic laws and the full suite of protections applies. There are implications also for statutory and implied warranty terms; unfair contract terms embedded in proposed energy rules and laws; and the pending Rule Change proposal by the AEMC, which was not made part of a transparent process at the time when the NECF2 Exposure Drafts were put forward for consideration by stakeholders.

The concerns extend to all distributors of gas and electricity in all states and their servants contractors and/or agents whether or not "at arm's length."

I have a number of concerns that are inter-related but will refrain at this stage from committing these to paper to the ACCC and AER, who have in any case received copious material from me in the past, and have an opportunity to study my various submissions mostly to MCE and ESC (Victoria) arenas, including:

Essential Services Commission Review of Regulatory Instruments (2 parts together called Part2A, (1 and 2)

http://www.esc.vic.gov.au/NR/rdonlyres/6AD5F77F-15F2-47E8-BA69-A0770E1F8C50/0/MKingstonPt2ARegulatoryReview2008300908.pdf

NECF 1 Consultation RIS

http://www.ret.gov.au/Documents/mce/_documents/Madeleine_Kingston_part320081208120718.pdf

Gas Connections Framework Draft Policy Paper (2009)

http://www.ret.gov.au/Documents/mce/_documents/Energy%20Market%20Reform/ec/Madeliene%20Kingston.pdf

NECF2

major submission with case studies and analysis - examining amongst other things objectives comparative law and application

www.ret.gov.au/Documents/mce/emr/rpwg/necf2-submissions.html

http://www.ret.gov.au/Documents/mce/_documents/Energy%20Market%20Reform/National%20Energy%20Customer%20Framework/Madeleine%20Kingston.pdf

see also submission by Kevin McMahon, private citizen, as a victim of the "bulk hot water policy arrangements" in Queensland

and of Dr. Leonie Solomons Director of failed second-tier retailer Jackgreen International

Preliminary submission to

Consumer and Competition Advisory Committee, Ministerial Council on Competition and Consumer Affairs (2009)

http://www.treasury.gov.au/documents/1614/PDF/Kingston_Madeline.pdf

Commonwealth Treasury Unconscionable Conduct Issues Paper: Can Statutory Unconscionable Conduct be better clarified?

http://www.treasury.gov.au/documents/1614/PDF/Kingston_Madeline.pdf

includes case study, detailed analysis of selected provisions; other appendices (mis-spelt Madeline and instead of Madeleine

MCE Network Policy Working Group

Economic Regulation

http://www.ret.gov.au/Documents/mce/_documents/Energy%20Market%20Reform/ec/Madeliene%20Kingston.pdf

ESC Review of Regulatory Instruments

http://www.esc.vic.gov.au/NR/rdonlyres/6AD5F77F-15F2-47E8-BA69-A0770E1F8C50/0/MKingstonPt2ARegulatoryReview2008300908.pdf

also

Productivity Commission's Review of Australia's Consumer Policy Framework (subdr242parts 1-5 and 8) (2008 divided-parts)

www.pc.gov.au/projects/inquiry/consumer/.../subdr242part4

www.pc.gov.au/projects/inquiry/consumer/submissions/subdr242part5

http://www.pc.gov.au/__data/assets/pdf_file/0007/89197/subdr242part8.pdf

Productivity Commission's Review of Performance Benchmarking of Australian Businesses: Quality and Quantity (2009)

http://www.pc.gov.au/__data/assets/pdf_file/0006/83958/sub007.pdf

and Part 3 substantially similar to Part 3 submission published on MCE website NECF1 Consultation RIS

AEMC

Submission (2 parts) to AEMC First Draft Report Review of the Effectiveness of Competition in the Electricity and Gas Markets in Victoria

examines the marketplace at the time

http://www.aemc.gov.au/Media/docs/Madeleine%20Kingston%202nd%20Sub%20Part%201-d448ce8f-6626-466d-9f97-3d2c417da8b4-0.pdf (first 100 pages)

Finally, I remind the AEMC of the changes to generic laws and the Media Release issued on 15 April. he first part of the Australian Consumer Law (replacing the TPA) is now in force.

See

http://www.accc.gov.au/content/index.phtml/itemId/923837

"This will provide greater protection from unscrupulous operators

The ACL gives the ACCC new enforcement powers to protect consumers, including the ability to seek or issue:

- *civil monetary penalties*

- *banning orders*
- *substantiation notices*
- *infringement notices*
- *refunds for consumers, and*
- *public warnings.*

Under the new legislation the ACCC can seek financial penalties of up to $1.1 million for corporations and $220,000 for individuals in civil cases for unconscionable conduct, pyramid selling and sections of the law dealing with false or misleading conduct.

"Further the ACCC will be able to deal with 'repeat or serious offenders' by seeking court orders banning them from managing corporations," he said. "This will now be available in cases involving unconscionable conduct, and breaches of various consumer protection and product safety provisions.

"The ACCC will now be able to use substantiation notices to require traders to justify claims they make about products they promote. These will provide a fast-track way to identify if a potentially harmful misrepresentation has been made. Examples could include was/now advertising and claims about food, health, environmental impact and business opportunities.

"Where the ACCC has reasonable grounds, it may now issue an infringement notice in cases of suspected unconscionable conduct, some false or misleading conduct, pyramid selling and various product safety provisions. Infringement notices will enable the ACCC to respond quickly to alleged breaches of these parts of the law and help facilitate a quick resolution of ACCC concerns with traders.

"Infringement notice penalties for false or misleading, unconscionable conduct, pyramid selling and breaches of product safety provisions are $6,600 for corporations and $1,320 for individuals.

"Vulnerable and disadvantaged consumers will particularly benefit from the ACCC's new ability to seek redress through the courts for consumers who are not included in a particular legal action. For example, the ACCC could ask the court to order an unscrupulous trader to provide refunds to consumers affected by misleading conduct."

Unfair contract terms are also covered in the new legislation with provisions applying to standard form consumer contracts. These come into effect on 1 July 2010 and public guidance will be circulated to major business and consumer organisations before then."

CONCLUDING REMARKS

I do not believe that either the MCE nor the AEMC has adequately understood the implications of the tacit endorsement of existing jurisdictional arrangements, or the implications of the proposed outsourcing arrangements in respect of the issues that I have raised that have been brought to the attention of various bodies, mainly within the energy arena for the last four years and are again articulated in my submission to the National Energy Consumer Framework (NECF2).

The issues of comparative laws, conflict and overlap with other schemes, unnecessary expenditure proposals for upgrade and maintenance to water meters, to be passed on to end-consumers of heated water receiving no energy at all, are matters of ongoing unaddressed concern.

The major case study that I included with submissions to the Gas Connections Framework Draft Policy Paper (2009); to the NECF2 Package and to the Commonwealth Treasury's Unconscionable Conduct Issues paper illustrates the consumer detriment that has resulted from inappropriate imposition of contractual status on a particularly vulnerable end-recipient of heated water who received no energy in connection with what is commonly termed the *"bulk hot water arrangements."*

I repeat that those receiving heated water that is fired by a single gas meter cannot ever be termed as *"embedded customers."* There is no such thing as an embedded gas network. Gas is either directly supplied to the abode of the party deemed to be receiving it or it is not. The supply is always by a licenced distributor. If those arrangements have been changed or are proposed to be changed there are unaddressed technical and safety considerations, besides the issues of substantive unfair contracts implicit in the terms of deemed contracts proposed by the NERL and NERR.

I urge the AEMC to consider these matters.

As much as this material may be out of time for the current deliberations, failure to consider them would be irresponsible. The MCE and AEMC have had ample opportunity to study this material in the context of formal submissions already on record and has chosen not to do so.

The perceived general failure to distinguish between gas and electricity markets, wholesale and retail markets, or to properly understand the many technical and legal issues involved seems to have led to flawed decision-making to date.

The outsourcing arrangements, and the implicit endorsement of the *"bulk hot water arrangements"* reflect disregard of the principles of comparative law, the revised generic laws with further changes effective from 1 July 2010; trade measurement best practice and existing and proposed changes to trade measurement laws; tenancy laws; the general and specific rights of individual consumers; and the implications of using the threat of disconnection of heated water supplies as a means of endeavouring to impose by coercion inappropriate and unjustifiable contractual obligation for the sale and supply of

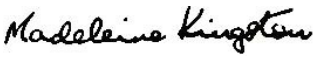
energy let alone the proposed capital expenditure for water meter upgrades and inflated outsourcing costs associated with this.

The metering and billing services whether in-house or outsourced are provided to Body Corporate entities; a single gas meter (or electricity meter) exists, which for settlement purposes is a single supply connection or energization point. It is only necessary to read a single meter and directly charge the Body Corporate entity who requested the service.

I urge the AEMC and MCE to again give this matter serious consideration. I will in any case repeat my concerns in response to the Draft Decision, now delayed till 6 May 2010.

I am copying this correspondence to several relevant parties.

Yours sincerely



Madeleine Kingston

Individual Stakeholder

Copies by email to

Graeme Samuel, Chair ACCC

Michele Groves, CEO AER

Michael Buckley General Manager Network Regulation North Branch Australian Energy Regulator

The Hon Patrick Conlon, MP Minister for Energy SA and Member MCE

David Waterson General Manager Development and Strategy AEMO (NEMCO) (letter 18 June 2009 refers Rule Change Proposal: Metering Data Providers and related matters

General Manager, Legal Metrology National Measurement Institute