Kevin McMahon
Unit 20
5 Milford Street
IPSWICH QLD 4305
(Individual Stakeholder and Private Citizen)
kmcmahon6@bigpond.com

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Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235
submissions@aemc.gov.au

Attn: Mr Mark Tutaan or Mr Rory Campbell

ADDITIONAL COMMENTARY TO AEMC

AEMC ref: ERC0092

PROVISION OF METERING DATA AND SERVICES AND CLARIFICATION OF EXISTING METROLOGY REQUIREMENTS RULE 2010

RULE CHANGE REQUEST BY AEMO (nee NEMMCO)

Dear Australian Energy Commission

The additional material that I tried to lodge online last week immediately after my original 5-page submission dated 3 July has not appeared online. I had assumed after discussions with AEMC staff by telephone that all components of my submission had been received. I had mentioned the technical difficulties with online lodgement that I experienced.

Despite lateness, I am now sending you similar material to that which was despatched last weekend, but which possibly did not transmit. I had sent additional material to clarify certain matters. I noted that your website was down on that weekend. I now attempt to do that again by consolidating some of the documents that I had sent into a single document and ask that you publish as a late submission, as well as take the matters into account.

I understand that it is the AEMC's proposal to create a new category of data service provider who will self-regulate in taking responsibility for metering data services. I am concerned about the implications of this and especially in relation to certain arrangements in which no flow of either electricity or gas occur, but for which end-users are charged. These are the bulk hot water arrangements where energy service providers are trying to impose charges for delivery of heated water. The water is already paid for by direct contract with the water provider.

I have already mentioned the context of the BHW matter and provide further material including my submission to the NECF2 package, also copied to the Network Policy Working Group. Please find attached my submission to the Network Policy Working Group, Ministerial Council on Energy. My submission to them appears on their website:

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

submission Kevin McMahon.

It also appears on the Senate Economics Committee - Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010:

http://www.aph.gov.au/senate/committee/economics_ctte/tpa_consumer_law_10/submissions.htm

submission No. 47.

I have included this document so that the commission can better understand the situation in Queensland specifically, and throughout Australia generally. The attachment details the problems regarding the lack of any regulation or any avenue to complain about the Bulk Hot Water Billing arrangements in Queensland.

The AEMCs draft rule determination has accepted AEMO's proposal to have a market participant, rather than AEMO, responsible for the remote collection of metering data, to create metering data providers as a new category of service providers and to clarify many of the terms relating to metering and metering services in chapter 7 of the Rules. I object to this draft rule determination

Meanwhile I am concerned about how meter data service providers and others can be made more, and not less accountable, as I do not believe that the AEMC fully appreciates the impact of practices on the market and on those believed to be receiving gas or electricity.

I have explored the various packages that are being offered by metering data providers and am concerned about many aspects of their operations.

There are many meter data providers operating in Australia, and many offer “other” services and management for water supply, lighting, air conditioning, internet servers on site, cleaning and grounds maintenance, central heating, and of course, bulk hot water.

These bundled packages end up being charged to owners and tenants as a single charge on a bill. There is no way that hot water consumers can know the details of energy use and this type of practice offers no transparent information to the user.

The AEMC needs to be aware that it is Energy Retailers, licensed or unlicensed who are approaching property developers with a “have I got a deal for you” service. They will supply and install a mass use boiler and hot water meters and will generously take over the billing process for BHW. This happens long before an apartment buyer or their collective body corporate exists. This collusive arrangement bypasses the need for each apartment to have their own hot water system, and gives the developer a financial advantage.

The trouble with this is that owners and tenants end up paying for the infrastructure of the building they live in, and not just the cost of hot water! Once a individual owner or tenant leaves, they can never recoup that cost from the owner, and they gain no benefit from paying for this infrastructure. Landlords are not permitted to third party-line-force these services to tenants, though this does occur. Owners are being forced to accept arrangements that were made between the developer and energy supplier, that they were never party to long before ever taking up ownership.

I am aware from publicly available data that members of a body corporate of owners is suing the service provider, ServiceLink and developer to escape from this type of collusive arrangement, which has lock them into a 15 year arrangement where no gas is supplied, and where there are no price controls or access to energy ombudsman schemes. Included in this contract is the provision of gas powered hot water being metered in kWh, and not cubic meters of gas or Mj.

Tenancy law has some remedy for services supplied by a landlord, but in this case, it is not the landlord who sends the bill. There are no contracts with eventual property owners or tenants, for the contract is between the developers and energy retailers who have other services to sell, and no one else.

Sometimes the retailer is an energy entity, and sometimes the retailer is a service provision company. In all good conscience BHW and heated hot water sold by ANYONE should have provisions in energy law to protect consumers. When it comes to having a licence to on-sell electricity, the exemptions provisions offered to landlords and the service provision companies by the AER only entrench the injustice placed upon electricity and gas consumers and also hot water consumers.

There is no proper remedy offered regarding Embedded Networks mentioned in all the submissions, and needs to be thoroughly investigated and considered. The lack of contestability is profoundly troubling for consumers. Although bulk hot water arrangements are not strictly Embedded, they are being treated as if they are and consumers, they are being sold a product based on guess work.

I am aware that Jemena Gas Networks (NSW) Ltd has included in its Gas Access Proposal a budget that has been approved by the AER for a brand new category of non-energy meters that are to be included into access agreements as legitimate costs. Once a precedent is set on one network, all other gas distributors will approach the AER to have every water meter included into access arrangements and cost allocations.

This will see a telecommunications network that is not a dedicated network, used for remote read data

metering services, which is contrary to that proposed for electricity.

It seems that any remote data read information via any device is to be included in the AER's domain.

The new category of Meter Reading is called a “Non-Reference Services”. They are neither a “Haulage Reference Service” nor are they a standard “Meter Data Service” for the latter relates to a “Reference Service” regarding remote read gas and electricity meters, and (now) also water meters.

The work “Network” in energy law is electricity wires and gas pipes. The AER has created a whole new meaning of this by introducing “Embedded Network”. This is fine for descibeing a small network of wires only, say, in a caravan park, boarding house or similar situation, but to have a system of hot water pipes in a multi-story apartment building call a network is wrong in word or deed. There are no gas “Embedded Networks” for one needs a gas meter to sell gas.

This sort of phrasing, grammar and syntax, if left to fester, will cause all manner of confusion.

The new and perverted Non-Reference Services relates to the remote reading of HOT WATER METERS.

This is an excluded service, a non-DuOSS service, for it has nothing to do with the supply or sale of gas or electricity. They are not ENERGY METERS.

The AER access arrangement notice is via this link:

http://www.aer.gov.au/content/index.phtml?itemId=737830

and their decision on the access arrangement is via this link

http://www.aer.gov.au/content/item.phtml?itemId=737909&nodeId=f87d376b58b82d8e1c7057065f6c9f92&fn=Access%20arrangement%20including%20the%20reference%20services%20agreement%20and%20access%20arrangement%20information.pdf

The AER seems to be pandering to a sector of the market regarding excluded Bulk Hot Water services. If you type the work “hot” into the above PDF search window, you will see what I mean, (pages 61, 74 & 100).

This BHW industry is a rapidly growing market, and indeed, a very profitable market that is not contestable throughout Australia. It is certainly noted by an old Energex document, that it was the only sector that had outpaced the sale of gas in Queensland and probably Australia-wide also. It is a wonderful cash cow.

Long before Smart Electricity Meters or Smart Gas Meter have properly entered the scene, the Hot Water Industry wishes to force forward their alleged “Smart” remote read Hot Water Meters, and foist the costs of an unwarranted upgrade on consumers (and not property owners who arranged BHW in the first place), long before your Commission has become aware of the AER's actions.

Once this precedence is established, it will flow through to every hot water meter owner/controller, whether they be an energy entity or not, for there are privateers offering meter reading services to Body Corporates and Property Owners that exist outside energy laws.

To have both electricity and gas markets, laws and codes supporting such a site monopoly, yet have no protections for the actual end consumer is truly abhorrent.

In my submission to you of 1st July 2010, I lament that once this is allowed through,, the true cost may be subsumed and merged into Supply Charges which never have a proper brake down on a bill, and that the many parts of the Supply Charges remain an non-transparent addition to bills

The AER also seems to be working backward, for it has broadcast an Issues Paper regarding Retail Pricing Information Guidelines. The guideline is via this link:

http://www.aer.gov.au/content/index.phtml/itemId/734869

and the Issues paper can be found at:

http://www.aer.gov.au/content/item.phtml?itemId=736313&nodeId=504f3fa62bbf77316d7111dd4a5d6566&fn=Issues%20paper%20-%20retail%20pricing%20information%20guidelines.pdf

The AER seems to be very selected in where to quote from, and in the Victorian example, has gone out of its way not to mention that BHW billing information is requirement under the Energy Retail Code in that state.

The AER seems to have all manner of laments when it comes to BHW for in its "Approach to Retail Exemptions" seen here:

http://www.aer.gov.au/content/index.phtml/itemId/737837

and the Issues Paper therein:

http://www.aer.gov.au/content/item.phtml?itemId=737846&nodeId=926b4bf4f96fa91cdd3367147dbeb46e&fn=Issues%20Paper%20-%20Approach%20to%20Retail%20Exemptions.pdf

The AER seems confused and has dared to use the term "Sale of Energy" in the above PDF. Energy law says energy is electricity or gas only, and customer retail services are for the sale of electricity and gas only.

The AER has ignored unfair contract terms and other generic laws to fix any unfair contract, or to gain statutory rights and actual and implied warranties to help BHW consumers. Well, this is a bit rich, for where would tenants find the time or money to gain any form of justice from price gouging, or in the worst of cases, disconnection of their hot water. In Queensland one can seek, but no necessarily obtain, an unenforceable undertaking for each quarterly bill with an application fee of $255. This would have to be done four times a year by many thousands of citizens, with no precedence ever set. Bills issued are based on a guess with no energy attributed to usage.

Gas cannot be embedded for both gas and electricity, as the term embedded is wrongly applied for the arrangements known as "bulk hot water arrangements".

I dare ask the AEMC members "COULD YOU DO WITHOUT HOT WATER"? The AER offers no protections to BHW consumers, yet allow all manner of inclusions for hot water delivery in its dealings with the hot water industry. It is not good enough that this matter to be left to the jurisdictions, for no consistency is achieved, and a hotch-potch of rules and procedures and definitions are adopted.

For all these reasons I do not believe the Metering Data Service Providers should be left unsupervised as solely responsible for market operations and settlements.

May I request that you bring your nominee, the AER, into line?

In conclusion, my view is that allowing meter data service providers more direct responsibility and less accountability to a single over-seeing body is a mistake that will led to even further problems within the market.

I have no objection to my personal details appearing on you website.

Yours most sincerely

Kevin McMahon

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