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18 May 2015

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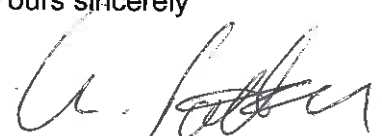

Dear Mr Pierce

Re: Submission on AEMC draft decision - metering competition

Please find attached our submission regarding the AEMC's draft decision on the National Electricity Amendment (Expanding competition in metering and related services) Rule 2015.

We would be pleased to provide further assistance to the Commission on this area of reform. If you would like to discuss any aspect of this submission, please contact Bruno Coelho on 08 8213 3435.

Yours sincerely


Chris Pattas
General Manager
Networks

Sent by email on: 18.05.2015



Rule changes – expanding competition in metering & related services

**AER submission to
Australian Energy Market
Commission draft decision**

May 2015

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1 Introduction

The AER welcomes the opportunity to respond to the AEMC's draft decision on changes to the National Electricity Rules (NER) to expand competition in metering and related services.

This is a key area of national reform, particularly coupled with reforms introduced to drive greater cost reflectivity in network prices. Competition in metering can efficiently deliver services and products that will allow consumers to more actively participate in the National Electricity Market. This requires management of various tensions — moving away from monopoly network service provision while not inhibiting their ability to manage their networks efficiently, and providing consumer choice while not introducing excessive complexity. The draft decision balances these issues effectively. In particular, we support the following key aspects:

- Removing exclusivity in who can be a “Metering Coordinator” and be responsible for providing meters and services to consumers. Also, as a balanced playing field is required for competition to emerge in this role, we support the need to develop a distribution ring-fencing guideline to separate monopoly and competitive service provision.
- Additional consumer protections that include:
 - Procedures governing disconnections and reconnections to safeguard customers. Consideration is needed on whether to limit the arrangement of disconnections and reconnections to retailers and distributors to guarantee existing customer protections.
 - Allowing customers to opt-out of retailer led new meter roll-outs, providing discipline on retailers to convince consumers of the additional value of having their functioning meter removed and replaced with the retailer's. There appears to be a need for more explicit disclosure requirements on these issues in market retail contracts.
 - Safeguards with respect to who can access the additional services and more detailed data that will be unlocked via smart meters.
- Introducing a national minimum specification for meters, a standard upon which to commence commercial negotiations on the services that might be delivered—set appropriately low, focussing on the capability to provide a set of services that all customers on aggregate are likely to benefit from.
- Minimising regulation at this early stage of market reform, with the intent of revisiting various issues as part of a later review of competition in metering. We support:
 - Limiting customer appointments of Metering Coordinators to large customers. Compared to small customers, they will have greater bargaining power, require more bespoke arrangements and not require the same level of consumer protections to govern their interactions. The costs of allowing small customers this choice are likely to outweigh the benefits.
 - Leaving meter service access to commercial negotiation rather than access or price regulation. There appear sufficient incentives on Metering Coordinators to negotiate with other parties, to deliver and earn revenue from additional services. Also, the possibility of distributors by-passing the Metering Coordinator and using/installing their own network management devices provides further discipline for commercially agreed outcomes. However, any by-pass would be subject to the cost efficiency and

procurement checks via our regulatory determinations, should distributors seek to recover the costs of these devices via regulated revenues.

2 Framework for competition

The draft decision introduces a multi-tiered framework to expand and protect competition while sheltering small consumers from potentially significant complexity. We support this framework, in particular:

- The removal of exclusivity in who can be a Metering Coordinator and the processes by which appointments to this role can occur.
- Complementing competition with a minimum set of standards that all new and replacement meters are required to comply with.
- The need to develop a national distribution ring-fencing guideline, and the discretion afforded to us regarding its application.

2.1 Removing exclusivity

We support the draft rules allowing any party that is registered with the Australian Energy Market Operator to take on the role of the “Metering Coordinator” which largely reflects that of the current “Responsible Person”. This removes the current exclusivity that exists in the NER and will enable different parties to compete to be appointed to this role, including a retailer, distributor or a third party. We also support the proposed framework by which appointments to this role are to occur after 1 July 2017, as follows:

- Requiring retailers as the Financially Responsible Market Participant at the connection point, to be responsible for appointing Metering Coordinators. This provides a central point for consumers to negotiate packages of energy products and services. Metering and related services will form part of the bundled package (together with energy tariffs and other products/services) that customers decide in contracting and negotiating with their retailer.¹ Further, as the Metering Coordinator is to be a separately registered and separate legal entity to the retailer, other parties will be able to competitively tender for the provision of this role.
- Only allowing large customers to by-pass a retailer's choice of Metering Coordinator and appoint their own. Large customers could have more bespoke metering requirements, and greater information and negotiating power. In contrast, small customers would be in a different position and require more detailed protections to govern their interactions with this new Market Participant. Our earlier submission to the AEMC's consultation paper considered that there could be merit in allowing small customers to appoint their own Metering Coordinator. This was to not prejudge the form of likely competition and to maximise consumer choice. However, we accept the AEMC's conclusion that the costs of doing so would likely outweigh the benefits. Instead, limiting small customers to choosing their desired retailer means that they continue to be covered by existing protections concerning their interactions with retailers.

¹ Small customers will in practice be limited to the metering options offered by the retailer's chosen Metering Coordinator. This means that these services will form part of the customer's decision on which retailer to choose and whether they need to switch to access different packages of bundled services.

- Requiring retailers to appoint the distributor as the initial Metering Coordinator where a customer has an existing regulated meter at the commencement of this rule (1 July 2017).² This provides a smooth transition to competition by maintaining the terms and conditions including price of these services, as set in our regulatory determinations, until such a time as a customer receives a new meter provided on a competitive basis.
- Allowing a retailer to remove the initial Metering Coordinator and appoint another party to this role, and requiring that distributors not inhibit their ability to do so. There are various circumstances which might trigger the need for a new party to be appointed. We support:
 - Requiring that meters comply with National Minimum Specifications where an existing meter fails or is deemed to have failed (based on required sample testing) and needs replacing, or a new meter is required for a new connection or new service.³ This provides meaning to the specifications. In these situations a retailer would need to reconsider Metering Coordinator appointments, including terminating the regulated distributor's role as the initial Metering Coordinator. The new compliant meter would be a smart meter (type 4) which we classify as an unregulated service, and would need to be provided by an unregulated business.⁴ Should a distributor seek to provide a minimum specification meter, it would need to do so via an entity ring-fenced from its monopoly business. There might also be commercial drivers for appointing a new Metering Coordinator here, given the greater potential for smart meters to derive efficiencies for various market participants compared with alternatives.
 - Allowing retailers to terminate the distributor's role as the initial Metering Coordinator, should there be mutual benefits to the retailer and the customer, in having a customer's existing and functioning meter replaced with a new meter. For example a retailer might see commercial benefit in providing a new smart meter to a customer to allow it to offer more varied services, or to save on meter reading costs.⁵ Also, competition could deliver metering services at a lower cost than what might be expected by a regulated service provider. With our decision to unbundle existing regulated metering service provision costs (discussed in section 4), retailers will be able to clearly identify to customers their existing regulated costs and how their own services compare. In these circumstances it is appropriate that any new and replacement meter after 1 July 2017 comply with the National Minimum Specifications to provide meaning to the specifications. As explained above, this would in-turn trigger the need to appoint a new Metering Coordinator. We also consider it important to provide customers with explicit informed consent and the possibility of opting-out in this circumstance. This provides some discipline on

² In non-Victorian jurisdictions, this means a type 5 – manually read interval meter, or type 6 – accumulation meter. In Victoria, this means a smart meter deemed to be a type 5 meter that has been provided as part of the Advanced Meter Infrastructure government mandate.

³ A new service could include for example, a customer deciding to take up a time varying tariff that might not be possible to deliver with a customer's existing meter (e.g. an accumulation meter).

⁴ The exception is South Australia where smart meters are classified as negotiated services. This service classification still means that the costs of smart meter provision are not subject to regulatory control and ring-fencing would still apply.

⁵ Meter reading can be done remotely via smart meters consistent with the national minimum specifications.

retailers to effectively market the case and value for the customer in having its existing functioning meter removed.

However, clarification is required in relation to new property developments and who in these circumstances appoints the Metering Coordinator. Under current arrangements, a residential developer would acquire a meter from a distributor, the customer that purchases the property then chooses their retailer, but the responsibility for the meter remains with the distributor—until 1 July 2017. While it is clear that any new meter in a development would need to comply with the minimum specifications, it is not altogether clear who would provide the meter to such customers after the existing exclusivity arrangements for distributor metering expire after 1 July 2017. It is possible that individual customers in new developments would obtain new meters when they choose their retailers in the same way as other customers. Other options may also be possible. However, the key issue is that customers are able to freely choose their retailer (and hence their metering co-ordinator) at any time and are not locked into an arrangement chosen by a property developer or any other party.

2.2 Minimum specifications

Introducing a set of National Minimum Specifications for meters complements the competition framework by setting a platform to commence and guide commercial negotiations on service provision. Regulating a set of minimum specifications might appear at odds with the premise of competition driving technological choice. However, we agree with the AEMC that specifying standards in the NER provides a broad platform for competition to customise offerings over and above those that are most likely to derive benefits for most consumers. We therefore support the introduction and design of the proposed minimum specifications, applicable from 1 July 2017, in particular:

- Their focus on services that meters must be capable of providing rather than the technologies to be used—avoiding the risk of technological obsolescence. Further, by requiring that meters be capable of providing these services rather than requiring that they be offered, allows service provision to evolve in response to market demand.
- Their low minimum threshold—focussing on the set of services most likely to derive superior benefits for all consumers and reduce transaction costs of commercial negotiations. It is appropriate that any additional services that might be required by particular customers or other parties evolve in response to market demand.
- Requiring that all new and replacement meters comply with the minimum specifications—providing relevance to these specifications. We also welcome the draft decision's clarification that this specification will also apply to meters that are deemed to have failed, via a process of sampling according to existing meter testing requirements.⁶ This means that for residential customers with an existing regulated meter, the regulated distributor as the current Responsible Person and as the initial Metering Coordinator will

⁶ As part of our recent regulatory determinations, these replacements are referred to as either 'reactive' (in response to meters failing) or 'pro-active' meter replacements (deeming populations to have failed following sample testing). These replacements and the requirements to sample test populations of meters are both current responsibilities on the regulated distributors for types 5 and 6 meters. These responsibilities would remain with the distributor until such a time as they are replaced as the initial Metering Coordinator.

continue to be required to sample test the accuracy of their meters. Any meter identified as needing replacement will then need to comply with the National Minimum Specification and be provided on competitive basis. For distributors this will mean provision via a ring-fenced entity, as discussed further below.

2.3 Protecting competition

The removal of exclusivity in service provision is at the core of the framework for expanding competition. However, it is also important to provide for a level playing field for parties seeking to compete to take on the role of Metering Coordinator.

As set out in our earlier submission to the AEMC's initial consultation paper, this can only be achieved if regulated monopolies are disallowed from competing against other firms that do not operate under the NER regime of regulated cost recovery. To this end, the draft decision requires that the AER produce a national distribution ring-fencing guideline by 1 July 2016, with discretion as to how and in which circumstances it should apply. We support these proposals but note the following implementation issues:

- In developing a national guideline we will consider how to identify services to be provided on a separate basis. With respect to separation, there are various issues that need to be addressed, including financial separation, access to information on an equal or non-discriminatory basis, and whether full structural separation of activities into a separate legal entity will be necessary. The object of these requirements is to ensure distributors to not gain some form of competitive advantage relative to other parties tendering to become Metering Coordinators.⁷
- Our preliminary view is that it might be useful to distinguish between competitive and non-competitive segments of the metering market. For example, whether a business is competing to be a Metering Coordinator and provide meters compliant with the Minimum Specification, as opposed to being appointed as a Metering Coordinator as an 'initial' and transitional measure for existing regulated meters, as discussed earlier. This could mean that distributors taking on the role of initial Metering Coordinator would not need to be ring-fenced.⁸ However, should it then seek to be a Metering Coordinator to provide a new or replacement meter after 1 July 2017, it would need to do so as part of an entity ring-fenced from its regulated business.
- We welcome the discretion proposed as to how we apply ring-fencing. However, we suggest considering if the drafting of the rules could include an explicit requirement that distributors competing to supply minimum specification meters as a Metering Coordinator (after 1 July 2017) need to do so via an entity ring-fenced from their monopoly business. This could facilitate our application of ring-fencing. As it stands, while it appears

⁷ The concerns here could relate as much to limiting cost transfer so that regulated revenues are not being used to cross-subsidise unregulated service provision, and limiting information access and retention so that distributors providing regulated monopoly distribution services do not in some way obtain information that might put them at a competitive advantage to other metering service providers, such as by using information obtained by distributors in their current exclusive meter service provision role and their role as the initial Metering Coordinator from 1 July 2017.

⁸ However, as noted earlier, there might still be a need in this situation to consider the issue of information access and retention.

workable, our ability to distinguish between monopoly and competitive services would need to occur as part of a more complicated series of stages as follows:

1. Our latest round of regulatory determinations have set how metering services should be classified and type 4 smart meters are not subject to direct oversight by us.
2. Certain circumstances would trigger the provision of a new meter—a meter fails or is deemed to have failed, a new meter is required for a new connection or new service, and/or a retailer seeks a new meter deployment (and the customer does not opt-out).
3. Any new or replaced meter would need to comply with the minimum specifications and be a smart meter, in turn requiring that these services not be subject to direct regulatory oversight and regulated cost recovery. This means that despite our current service classification allowing regulated distributors to provide type 5 and 6 meters on a new and replacement basis for the next 5 years, this rule change will overturn our classification. Regulated distributors will effectively be prohibited from providing any new or replacement meter of any kind from 1 July 2017.⁹ In this regard, it is worth considering clarifications to the drafting of the NER to explicitly indicate that the new rules override those in place at the time in which our regulatory determinations were made and override the determinations themselves.
4. A ring-fencing guideline would appear to apply by requiring that the provision of any new and replacement meter need to be as part of an unregulated entity, by virtue of these meters being smart meters and our classification decision.

⁹ 'Regulated distributors' refers here to distributors providing regulated monopoly distribution services – for which we provide oversight of either recoverable costs and prices or frameworks for negotiation of access terms and conditions including prices. Distributors will be allowed, after 1 July 2017, to provide a new and replacement meter and be a Metering Coordinator but need to do so via an entity ring-fenced from its monopoly or regulated business.

3 Access to metering services

Metering Coordinators will have an important role to play in the provision of new and emerging services via a retailer. It is likely that various parties will seek access to the broad range of services that can be unlocked by a smart meter, or seek greater specifications in these meters. These might include alternative / demand-side service providers or distributors. If Metering Coordinators restrict access to meters on unreasonable grounds it could lead to inefficient market outcomes, however, we agree with the AEMC that the possibility of this occurring is likely to be low given the points noted below. We therefore support the draft decision to not introduce access and price regulation with respect to competitive metering services, and instead leave issues of access to be subject of commercial negotiations, given the following:

- There appears sufficient incentives on Metering Coordinators to negotiate given that restricting access would deny them receiving new revenue streams. It would also limit the services available to customers and could motivate switching retailers (and therefore Metering Coordinators), risking leaving the meter stranded should the new retailer not seek to continue using a customer's existing meter.
- A further discipline on Metering Coordinator behaviour could be provided by the draft decision allowing distributors to by-pass the Metering Coordinator and continue to use their own network management devices or install new ones at or adjacent to the Meter Coordinator's meter.¹⁰ This is where a distributor is seeking access to metering services that can allow it to more efficiently manage its regulated distribution network. However, any proposal to by-pass competitively procured services and recover the costs of network devices via regulated revenues, would ultimately be subject to review in our determinations. A distributor would need to demonstrate why this was a more efficient option than sourcing services from a Metering Coordinator.

Allowing distributors to by-pass the Metering Coordinator appears to have merit, should negotiations break down. However, it is unclear how the distributor would then seek to obtain the authorisation to deliver services in those situations. Some services might only be of value to a distributor, such as using a network device to obtain network monitoring information on voltage levels, matters that might not effect a customer's premises. The situation is more complicated with respect to the use of network devices to directly control consumer appliances. This has the potential to confuse the role of the retailer for the consumer. It might also be worth exploring whether this is likely to lead to potential technical problems, if say a retailer is sending its own signals to a customer's appliance to control load (perhaps for drivers that differ to those of the distributor) and a distributor is sending its own signals to that same appliance or premises.

¹⁰ As the AEMC's draft decision indicates, the use of these network devices will be limited to network operations such as monitoring network condition or load control.

4 Network regulatory issues

The rule change proponents had initially requested the AEMC to explore the design of arrangements on how regulated costs should be recovered in the lead up to competition. We welcome the AEMC's draft decision to instead provide the AER with discretion on these matters that are core to our regulatory determinations, including as follows:

- Not requiring us to unbundle regulated metering charges—we have already committed to unbundling metering costs from distribution use of system costs in all jurisdictions.
- Not specifying how we determine the level and design of metering exit fees for customers departing from regulated metering service provision

Our 2015 final determinations for NSW and ACT distributors and preliminary decisions for SA and QLD, set out our approach to metering cost recovery.¹¹ We opted against a lump sum exit fee as proposed by the distributors, to recover the administrative costs of customer transfers and the residual costs of meter hardware—costs that remain unrecovered when a customer exits. We considered those proposals represented a barrier to competition. We instead opted for the following approach, which we believe best manages a number of required considerations under the NER and NEL:

- Structuring a set of fully unbundled charges for the provision of regulated metering services, via the Alternative Control Service classification. This provides visibility on the costs customers face with respect to their current regulated metering services.
- Allowing the capital costs of new meters provided by a regulated distributor to be recovered via an upfront customer contribution. This provides greater cost reflectivity on the provision of new services, a useful comparator for consumers to evaluate the costs of smart meters provided on a competitive basis, and mitigates the need to forecast new customer numbers during the regulatory control period. As explained earlier in this submission, the rule change effectively means that the regulated distributor would cease to provide new meters and therefore, will no longer charge this upfront regulated price after 1 July 2017.
- Setting one fully inclusive annual charge recovering all costs that a distributor incurs for the provision of metering services. This includes all operating costs, the costs of existing meters and meters that distributors forecast to need to install on a replacement basis.¹² This charge will have two parts:
 - Part 1—recovers the variable operating costs.
 - Part 2—recovers the capital costs of the metering asset base.

¹¹ AER, *Final decisions – Ausgrid, Endeavour, Essential Energy, ActewAGL distribution determinations*, Attachment 16 – Alternative Control Services; AER, *Draft decisions – Preliminary decision SA Power Networks, Ergon Energy, Energex distribution determinations*, Attachment 16 – Alternative Control Services.

¹² This role in providing replacement meters will effectively end with the introduction of this rule change in 2017.

- This annual charge is allocated to a connection point depending on particular circumstances:
 - If an existing regulated meter was paid for upfront, the customer with this meter only pays Part 1 of the annual charge. If this meter is then removed and replaced with a meter provided on a competitive basis, then that customer ceases paying both components of the regulated annual charge.
 - If an existing regulated meter is removed and replaced with a meter provided on a competitive basis, that consumer will cease paying Part 1 but continue to pay Part 2.
 - If a customer continues to receive regulated metering services via the distributor as the initial Metering Coordinator, that customer continues to pay both parts of the annual charge until the Metering Coordinator is replaced and the customer exits.

Our approach provides cost recovery for the distributor, while removing the need for customers to pay a lump sum to the distributor upon exit, which in our assessment presented a barrier to competition. Instead, our approach effectively smears all capital costs evenly across the entire metering customer base. This is in the same way that would occur if the costs were recovered under general network charges in Standard Control Services, but in an unbundled way providing transparency for customers on the costs of regulated metering.¹³

We consider that our approach to the recovery of regulated metering costs provides an appropriate platform to transition to competition from regulated service provision. However, we cannot apply this approach to support competition in Victoria. The advanced metering infrastructure Order in Council (the Order) specifies the manner in which an exit fee *must* be determined.¹⁴ While the Victorian derogation to mandate the provision of advanced meters (i.e. smart meters) by distributors will expire at the commencement of this rule change, the Order will remain in effect until 2020.

¹³ If the costs of regulated metering were added to the costs of providing Standard Control Services, they would not be specifically identifiable and be converted into their own specific prices—they would instead be added together to a bucket of costs that includes all costs of providing standard network services.

¹⁴ Electricity Industry Act 2000, Order under section 15A and Section 46D, Order in Council, August 2007, and as amended from time to time.

5 Consumer protections

Competition based on the provision of smart meters, will create new challenges in protecting consumer interests. Retailers will be allowed to do their own new meter deployments if they see value in doing so. Further, there might be multiple parties that will want to access the more detailed data and varied services that can be unlocked via these meters.¹⁵ It is therefore important to consider possible areas of harm for consumers and the design of governance to prevent the possibility of unauthorised access. We support the additional consumer protections introduced to this end, but comment below on their implementation.

Opt out arrangements for new meter deployments

We consider it appropriate for consumers to give authorisation to any new meter deployment by requiring that they be provided with explicit informed consent and the ability to opt-out of these deployments including for market retail contracts. Opting-out is appropriate where they have a functioning meter and the retailer has been unable to convince the consumer of the additional value they would receive from a new meter. However, we note that the drafting of Rule 59A – Sub-rule 6 of the NERR provides that retailers do not need to follow these procedures in situations where they are authorised under a market retail contract to undertake a new meter deployment. In implementing this provision, we suggest that the following needs further consideration:

- The exact definition that should be applied to the term ‘authorised’.
- How retailers under market retail contracts will be required to disclose information about new meter deployments and whether it is intended that customers under these contracts will be provided with an opt-out mechanism. The lack of specific requirements in the draft rules around new meter deployments under market retail contracts could lead to compliance issues for retailers. Retailers are subject to broader requirements under Division 5 of the Retail Law to ensure that customers are fully informed and that all matters relevant to a customer are adequately disclosed.

Disconnections and reconnections

Distributors and retailers will both value arranging disconnections and reconnections via the Metering Coordinator, as explored at AEMC workshops. Going forward, these tasks can be performed remotely, with meters complying with the minimum specification. Given that there will now be two parties arranging disconnections and reconnections, the risk of interrupting supply to critical customers such as those on life support, will increase. We therefore welcome the additional protections introduced by the AEMC, including requiring that these parties notify each other of changes to a customer’s supply status and restricting which party can reconnect a premises if the other party undertook the disconnection. However, we suggest the following should be considered:

- Whether a civil penalty should accompany draft rule 91 A which requires that Metering Coordinators cooperate with distributors for the purpose of ensuring that distributors are able to meet their obligations when interrupting supply. Not having a civil penalty here

¹⁵ This could include packaging energy information and advice, controlling load, or remotely disconnecting and reconnecting supply.

appears at odds with Rule 90 and (1) which sets out civil penalty provisions applying to distributors. There is a risk that if a Metering Coordinator does not cooperate, a distributor might be in breach of these rules.

- While the draft rules propose that a disconnection and reconnection can be performed by a Metering Coordinator, it is unclear if these services can only be arranged by a distributor and a retailer. It would appear appropriate for the rules to explicitly limit the arrangement of these services to distributors and retailers, allowing NERR obligations to reside with these two parties. This is particularly with respect to managing life support customers.

Access to services and data

We support the additional protections that the draft rules introduce with respect to accessing services and information provided by a customer's meter, including:

- Limiting access to a meter to parties explicitly nominated in the NER as "Access Parties", including key market participants and parties that have been granted authorisation by consumers.
- Requirements on Metering Coordinators to implement security measures to protect data from being able to be accessed by parties that are not authorised to do so.