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EnergyAustralia®

1 July 2010

Mr John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

Dear Mr Pierce John,

**Response to Second Stage Consultation – National Electricity Amendment (Provision of Metering Data Services and Clarification of Existing Metrology Requirements) Rule 2010**

**Project reference ERC0092**

EnergyAustralia welcomes the opportunity to respond to the AEMC regarding the Draft National Electricity Amendment (Provision of Metering Data Services and Clarification of Existing Metrology Requirements) Rule 2010.

EnergyAustralia supports the general policy direction of the rule change and previously identified a number of implementation issues for consideration in our response to the first round consultation on this rule change proposal on 19 October 2009. At that time we also identified a number of related matters that would improve the regulatory design of Chapter 7 of the National Electricity Rules.

EnergyAustralia notes that the AEMC has determined that it is not necessary to address the issues that we raised with respect to the responsible person for wholesale metering points and child NMIs in embedded networks. We are concerned that such an approach will continue existing uncertainty in the market and undermine the benefit of the other aspects of this Rule change.

In relation to the embedded network issues, EnergyAustralia has obtained external legal advice which sets out the basis for EnergyAustralia's concerns and explains why neither the existing Rules nor the Draft Rule provide for a Responsible Person within such networks. A copy of the advice is attached for your consideration. EnergyAustralia would be pleased to present further to the Commission on this issue once the Commission has had an opportunity to consider the advice.

The attached consultation response set outs EnergyAustralia's detailed comments on the draft Rule.

Please contact Mr Keith Yates on 4951 9359, if you require any further information or would like to discuss our response.

Yours sincerely

**TREVOR ARMSTRONG**
Executive General Manager
System Planning and Regulation

**Attachments**:
1. Comments on National Electricity Amendment (Provision of Metering Data Services and Clarification of Existing Metrology Requirements) Rule 2010.
2. External legal advice on Responsible Person and Embedded Network issues.

***NER Chapter 7: National Electricity Amendment (Provision of Metering Data Services and Clarification of Existing Metrology Requirements) Rule 2010.***
***Consultation Response Project Reference ERC0092***

Consultation review comments submitted by: EnergyAustralia Date: 1 July 2010

| Clause | Issue | Comment |
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| 7.2.3<br><br>of AEMC rule determination. | Responsible person for Transmission points. | EnergyAustralia believes for MPB services only that the default RP for transmission network connection points (TNCPs) should be the LNSP not the FRMP.<br><br>TNCPs require specific knowledge and maintenance to ensure correct settlement on the NEM. TNCPs are a "network" of metering points for a specific LNSP and local retailer area not just a single connection point, as would be the case for a "normal" Type 1-4 customer (e.g. a supermarket). This involves a detailed knowledge of the current and future configuration of the LNSP network to successfully manage TNCPs.<br><br>A number of issues support this proposal:<br><br>1. LNSP network security issues – LNSPs would be reluctant to supply detailed network configurations to a FRMP. Also networks at this level are integrated and can be have a dynamic configuration and change regularly to reflect operations, maintenance and capital works.<br><br>2. FRMP knowledge of the LNSP network – The FRMP does not have the detailed knowledge of the configuration of the LNSPs network (i.e. interconnections and open points). In addition to the existing network configuration, the FRMP will not have the details of new substation and feeder construction which could influence the location of TNCPs. With the amount of proposed capital works over the next 5 -10 years in the EA LNSP network, a large number of changes to TNCPs will occur.<br><br>3. Access to metering installations – TNCPs are located at the transmission/distribution boundary, they are located within the LNSPs substation and hence access to these metering installations may not be permitted for a FRMP. The LNSP would need to |

| Clause | Issue | Comment |
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| | | provide a standby person to observe an FRMP representative who is conducting necessary work.<br><br>4. Rule compliant metering equipment – As stated above these metering installations are located within the LNSPs substation, as such the LNSP owns, purchases and maintains the metering and associated instrument transformers. As the LNSP has to produce specifications, purchase and maintain these instrument transformers, it is logical that the LNSP to be the RP for the metering installation.<br><br>5. Rule compliant metering equipment – The instrument transformers used for metering are housed in the same physical equipment as instrument transformers necessary for the protection, control and management of the substation.<br><br>6. Legacy systems/equipment – Due to the range of equipment in LNSP substations specific skills and safety requirements are necessary for the safe and accurate testing of TNCP metering installations.<br><br>Table S7.6.2 in the proposed marked up version of chapter 7 identifies 2 categories of type 1 – 4 MDP accreditation, Category 1D – 4 D and 1T – 4T. This identifies that there are specific requirements pertaining to transmission connection points in the NEM and as such supports such a request to have the LNSP appointed as the default RP for TNCPs. |
| 7.3.1<br><br>of AEMC rule determination. | Audits of the MDP by the RP. | This could impose a number of issues for MDPs if each RP conducts audits on the MDP. An annual unified audit should be conducted and EnergyAustralia submits that AEMO should conduct these audits on behalf of registered participants. This way all MDPs will be audited under the one auditing regime and each MDP will be audited equally. |
| 7.3.2<br><br>of AEMC rule determination. | FRMP appointing the MDP for MDS. | EnergyAustralia submits that the Market Participant appointing the MDP to provide MDS may lead to confusion with respect to the correct terminology. The appointment of the "person responsible" for appointing a MDP to provide MDS and a "responsible person" to appoint the MPB could lead to confusion with the two terms being so similar and will inadvertently be used interchangeably. EnergyAustralia suggests that clarification and/or rewording is required to avoid this confusion. |

| Clause | Issue | Comment |
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| | | EnergyAustralia is also concerned as to how AEMO and other participants are going to be aware of who has appointed the MDP to provide MDS. In addition how are AEMO or other participants going to know who to contact as the RP or person responsible for the installation when AEMO is not privy to the offer between the LNSP and the Market Participant? Under this rule change proposal the two key fields in MSATs which would be used to identify the Responsible Person and the person responsible for appointing the MDP are the FRMP (for appointing the MDP) and RP (for appointing the MPB) NMI Participant relations fields. Example scenarios:<br><br>1. if the LNSP is the RP and FRMP appoints the MDP, then fields will be correct;<br><br>2. if the LNSP is the RP and also appoints the MDP, how will other parties know that the MDP was appointed by the LNSP as the FRMP and LNSP would be the same as in example 1?<br><br>Under this rule change proposal would an additional MSATs NMI Participant relations field be required to identify who has appointed the MDP (i.e. the FRMP or LNSP)?<br><br>A further issue with respect this clause is the need to close the process loop between the proposed clause 7.2.2 (c) and 7.2.3, to make it clear that LNSPs have the option to make an offer with respect to MDP services but are not under an obligation to do so. EnergyAustralia suggests the inclusion of clause (d) under Types 1 – 4 metering installations to refer to the possibility of the LNSP making an offer with respect to MDP services along the lines of:<br><br>(d) if requested by the Market Participant, the LNSP may provide an offer to the Market Participant for appointing a Meter Data Provider for the provision of MDS. |
| 7.3.3<br><br>of AEMC rule determination. | Responsible person for embedded networks. | The Rules do not recognise embedded networks and do not effectively assign the role of the RP for metering installations within an embedded network.<br><br>Embedded networks are referred to in various subsidiary instruments prepared by AEMO, such as the National Metrology Procedure, NMI procedures and the MSATs procedures. These instruments seek to make provision for embedded networks to enable customers who are connected to an embedded network to choose their retailer from whom electricity is |

| Clause | Issue | Comment |
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| | | purchased and to enable settlement of energy purchased by such customers. To facilitate this, these instruments contemplate the LNSP issuing NMIs for the child meters. Whilst not clearly provided for by the rules, generally DNSPs have cooperated in this approach to facilitate competition for these customers. However to extrapolate out this approach to support such DNSPs being the responsible person has never been properly considered or determined by the market or rule processes.<br><br>LNSPs have also been cooperative in the past with regard to the issuing of NMIs and Consumer Administration and Transfer Solution (CATS) Embedded Network Identifier Codes (EMBNETIDCODE) to Embedded Network Operators without the appropriate regulatory framework. EnergyAustralia believes that the issue of NMIs by the LNSPs is appropriate as only LNSP are issued with NMIs by AEMO, however as stated previously in this submission, the child connected NMIs for which these NMIs have been allocated are NOT connected to the LNSPs network and the LNSP responsibility under the Rules should be limited to issuing NMIs for connections within the Local Network. Such an obligation should be clearly stated in the Rules.<br><br>The attached external legal advice from Blake Dawson sets out the basis for this interpretation of the Rules with respect to embedded networks, the key point being that the LNSP to which the embedded network is connected (at the parent connection point) cannot be regarded as the Responsible Person for connections points within the embedded network (i.e. for child connection points). Those connection points are not connection points to the local distribution network service provider's network and it is not appropriate for that network service provider to be responsible for such points for practical reasons such as access as well the market design reasons explained further below.<br><br>This issue is most critical where the child connections points have metering types 5-7 as the "LNSP" is Responsible Person for such meters.<br><br>No changes should be made to the Rules to make the "LNSP" the Responsible Person for metering types 5-7 within embedded networks without a full assessment of the cost implications for network service providers. For example, there are many caravan parks, retirement villages and the like connected in EnergyAustralia's distribution district which in turn have customers connected to those embedded networks. EnergyAustralia does not |

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| | | own and has never taken responsibility for meters within such networks which are estimated to be in the many thousands. It is likely that the metering within such networks would not meet the required standards for either meter type 5 or 6 and that taking responsibility for such metering as the responsible person would be a very significant cost that have not been allowed for under the EnergyAustralia distribution determination. The LNSP in the case identified above would need to:<br><br>1. conduct a site audit on each meter to identify the property number of each meter for registration in MSATs;<br><br>2. incorporate the metering equipment in their meter asset management plan, which could involve additional meter testing;<br><br>3. obtain valid test reports for each meter that may not be available;<br><br>4. arrange to either test or replace the meter if a current valid test is not available;<br><br>5. arrange for the site details to be created in their meter reading systems and arrange for appropriate time frames for regular collection of the meter energy data.<br><br>Recovery of these costs would be complex. Given that these costs are not provided for in the distribution determination they would need to be recovered separately from the FRMP as these costs are payable by the FRMP under proposed clause 7.3A(a) of the Rules, currently clause 7.3.6(a). Proposed clause 7.3A(f) provides that "Paragraph (a) does not apply to the recovery of costs by a *Local Network Service Provider* that are associated with type 5, 6 or 7 *metering installations*, but only to the extent that these costs can be recovered by the *Local Network Service Provider* in accordance with a determination made by the *AER.*" [1] The existing provision is clause 7.3.6(f).<br><br>However as a type 5 – 7 connection within an embedded network is not connected to the LNSPs network and cost recovery is not available through the distribution determination any additional costs would need to be recovered from FRMP, which would be an unanticipated |

[1] National Electricity Rules Ver 37, p. 757

| Clause | Issue | Comment |
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| | | outcome for FRMPs and reinforces the need for the AEMC to carefully consider its proposed approach on this issue.<br><br>For Type 1-4 metering installations within an embedded network, the FRMP should be the RP for both the parent and child connection points unless the FRMP requests the LNSP to be the responsible person for both sets of metering points and an agreement is entered into with respect to such an appointment.<br><br>In the example provided by the AEMC in clause 7.3.3 where the Commission states:<br><br>"For example, if a child metering point is a type 5 metering installation, then the Responsible Person is the LNSP and if it is a type 4 metering installation then the Responsible Person is either the Market Participant or the LNSP."[2]<br><br>In this example EnergyAustralia submits that the Responsible Person must be the embedded network operator or FRMP not the LNSP of the parent NMI. Clause 7.2.3 (a) (2) of the National Electricity Rules states that an LNSP is the RP for:<br><br>"a type 5, 6 or 7 metering installation connected to, or proposed to be connected to, the Local Network Service Provider's network in accordance with paragraphs (d) to (i)."[3]<br><br>As stated above, a child NMI is not connected or proposed to be connected to the EnergyAustralia network, it is connected to the embedded network, therefore EnergyAustralia cannot be the RP for type 5-7 metering installations for a child NMI within an embedded network.<br><br>It might also be noted that in a recent document published by AEMO, Small Generator Framework Design Principles the following quote confirms the confusion currently in the NEM regarding the roles within an embedded network:<br><br>"AEMO considers that parent-child metering for small generation in embedded networks |

[2] AEMC Rule Determination – National Electricity Amendment (Provision of Metering Data Services and Clarification of Existing Metrology Requirements) Rule 2010, P. 24
[3] National Electricity Rules Ver 37, p. 733

| Clause | Issue | Comment |
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| | | plays a role that is distinct from that of traditional embedded network metering. AEMO understands that current embedded network procedures are being used to accommodate gross metering of embedded generation, a use for which embedded networks were not originally intended. AEMO believes that greater clarity in relation to embedded networks in the Rules, Metrology Procedures, MSATS, National Metering Identifier Procedure and other areas is needed to remove ambiguity in the registration of small generators in the NEM. It is also necessary to ensure both proponents and Network Service Providers are aware of their obligations under the Rules and other related procedures."[4] |
| 7.1.3 (a), 7.2.1 (b), 7.2.2 (e), 7.2.3 (l) and 7.14.1A.<br><br>from mark up of draft rule | Procedures, Service levels and Guidelines. | EnergyAustralia supports procedures, service levels and guidelines to provide assistance and where appropriate more detail in relation to the Rule provisions. However where such procedures, service levels or guidelines are contemplated the rule should specify the content and nature of the matters to be addressed in the guidelines to ensure that they do not operate to impose obligations or requirements on market participants that are not contemplated under the Rules and which may impose significant system or other costly obligations. |
| 7.2.3 (c) (2)<br><br>from mark up of draft rule | Notification of MPB to the Market Participant. | It is not clear why the Market Participant needs to be separately notified of the appointed MPB as this information will be identified in MSATS. EnergyAustralia would submit this requirement is not necessary. |
| 7.3.1 (a) (7) and 7.3.1 (i) (1)<br><br>from mark up of draft rule | Ensuring that meter data is captured where a metering installation has the possibility of generating into the NEM. | To capture the situation where there is the capability for bi-directional flows EnergyAustralia suggests that the following words be added to the end of the clause:<br><br>(7) be capable of separately recording *energy data* for energy flows in each direction where bi-directional *active energy* flows occur or could occur; |
| 7.4.2 (bc)<br><br>from mark up of draft rule | Typographical error in 4th line and relevance of matters for meter provider obligations. | Energy Australia suggests that the reference be to metering data service database rather than agency metering database.<br><br>Also EnergyAustralia query whether all of these matters are relevant for a Meter Provider, in |

[4] AEMO - Small Generator Framework Design Principles, Document No: MD_SG_001, p. 12

| Clause | Issue | Comment |
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| | | particular the references to databases maintained by Meter Providers and the delivery up of data to AEMO as these are not functions associated with the provision, installation and maintenance of a metering installation as contemplated by clause 7.2.5. These matters appear to more properly relate to the role of Metering Data Providers specified in clause 7.11 and Schedule 7.6. |
| 7.4.2A (f)<br><br>from mark up of draft rule | Typographical error in 4th line. | Energy Australia suggests that the reference be to metering data service database rather than agency metering database. |
| 7.7 (c)<br><br>from mark up of draft rule | Typographical error in 3rd line. | Replace “of metering data servicesperson.” with “of metering data services”. |
| 7.8.4 (b)<br><br>from mark up of draft rule | Typographical error in 3rd line | Replace “metering data services databases“ with ‘”metering data services database”. |
| 7.9.4 (d) and (e)<br><br>from mark up of draft rule | Clarification of notification time | These clauses refer to a notification time of 24 hours, and it is not clear if this notification timeframe include weekends and public holidays. Clause 7.11.2 (a) (10) of the marked up version of the rules states:<br><br>(10) notifying the *responsible person* of any *metering installation malfunction* of a *metering installation* within 1 *business day; and*<br><br>EnergyAustralia contends that to ensure standarisation in the Rules, it would be preferred if days are used. EnergyAustralia suggests 1 business day. |

| Clause | Issue | Comment |
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| 7.9.5 (c)<br><br>from mark up of draft rule | Typographical error in second line. | Replace "… responsible person financially responsible Market Participant…" with "… responsible person or financially responsible Market Participant…" |
| 7.11.3 (j)<br><br>from mark up of draft rule | Typographical error in 5th line. | There is a full stop and a comma after the unavailable. |
| 7.14.4 (e) (5)<br><br>from mark up of draft rule | Typographical error in 3rd line. | Remove inverted comma after … Metering Data Provider". |
| Schedule 7.1<br><br>from mark up of draft rule | Error in drawing. | In the middle "service provider" box this should read Meter Data Provider not financially responsible Market Participant. |
| Schedule 7.2<br><br>General Comment<br><br>from mark up of draft rule | Identification of Metering Type. | The general understanding and approach in the market o date has been that Schedule 7.2 effectively sets out how meters are classified for the purposes of the Rules. EnergyAustralia requests that the Commission satisfy itself that the Rules do actually operate in this way. Clause 7.3.4 states that the type of metering installation and the accuracy requirements for a metering installation which must be installed in respect of each connection point are to be determined in accordance with Schedule 7.2.<br><br>S7.2.1 states "this Schedule 7.2 sets out the minimum requirements for metering installations". Table S7.2.3 1 in turn only provides the minimum requirements for a meter not the defining characteristics of such meters and therefore it is not apparent how these provisions provide a basis for delineating between metering types. The view has generally been taken that adding remote reading capability to a Type 5 meter would convert that meter to a type 4 meter. However on its face there is nothing in clause 7.3.4 and Schedule |

| Clause | Issue | Comment |
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| | | 7.2 which state that a type 5 meter with remote reading capability would be a type 4 meter. We note that some provisions in the Rules such as existing clause 7.3.4(g) indicate that alternation of a type 5 or 6 meter to make it capable of remote acquisition would alter the classification, but as stated above, it is not apparent how this actually occurs. |
| Schedule 7.2.1 (b)<br><br>from mark up of draft rule | Suggestion for clearer wording. | EnergyAustralia suggests the following clearer wording:<br><br>(b) If a *Registered Participant* requires the *responsible person* to arrange for a *metering installation* to meet ~~may install a *metering installation* with~~ a higher level of accuracy than required by the Rules, ~~with~~ the full cost~~s~~ of this work must be ~~being~~ met by that *Registered Participant*. |
| Table 7.2.3.1<br><br>Type 4 clock error<br><br>of marked up rules | Table note Item 2a refers to whole current meter only. | Currently Item 2a states: "For the purpose of clarification, the clock error for a type 4 *metering installation* may be relaxed in the *metrology procedure* to accommodate evolving whole-current technologies that are acceptable in accordance with rule 7.13(a)."<br><br>EnergyAustralia submits that Item 2a should also include Type 4 CT metered installations as well. |
| Table 7.2.3.1<br><br>Type 5 clock error<br><br>of marked up rules | Currently states +- 20 sec and table note Item 3a refers to whole current meter only. | Currently Item 3a states: For the purpose of clarification, the clock error for a type 5 *metering installation* may be relaxed in the *metrology procedure* to accommodate evolving whole-current technologies that are acceptable in accordance with rule 7.13(a).<br><br>Either Item 3a should also include Type 5 CT metered installations as well or Item 3a removed and the clock error changed to 300sec as stipulated in schedule 2 ID 4.8 of the Metrology Procedure. |
| Table 7.2.3.1<br><br>Minimum acceptable class or standard of components | Refers to a whole current connected general purpose meter Wh:<br><br>• meets requirements of clause 7.3.1(a)(11); and | "data logger" has been removed as a requirement, as such a general purpose meter does not collect interval data so cannot meet the requirements of a Type 5 meter. |

| Clause | Issue | Comment |
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| from mark up of draft rule | • meets the requirements of clause 7.11.1(d). | |

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**30 June 2010**

**Your reference**
AEMC Submission

**Our reference**
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Dear Jane

**Responsible Person and Embedded Networks**

You have asked us to advise on the extent to which chapter 7 of the National Electricity Rules (**Rules**) provides for the allocation of a Responsible Person for metering installations at connection points within embedded networks.

More specifically, you seek advice as to:

1. whether or not the Rules provide for the Local Network Service Provider (**LNSP**) to be the Responsible Person for metering installations at connection points within an embedded network; and

2. the extent to which the Rules provide for, or enable anyone else, to act as the Responsible Person for metering installations at connection points located within embedded networks.

Set out below is an Executive Summary of our advice with our more detailed advice set out in the sections that follow. In section one, we address each of the above two questions in more detail. In section two we address some related issues and, in section three, we then draw some conclusions.

# EXECUTIVE SUMMARY

## 1. Embedded Networks and the Responsible Person

### 1.1 LNSP's and Responsible Persons within embedded networks

In our view, the Rules do not empower, or require, the LNSP to be the Responsible Person for metering installations located within an embedded network.

This is because the provisions of the Rules allocating the role of the Responsible Person do not apply to metering installations which are not connected to the LNSP's network.

### 1.2 Can anyone else be the Responsible Person for metering installations within embedded networks?

A Market Participant may effectively elect, under Rule 7.2.2, to be the

Responsible Person for a metering installation within an embedded network for a type 1-4 meter.

The Rules do not identify anyone to act in the role of the Responsible Person for type 5-7 metering installations within embedded networks.

## 2. Related issues

### 2.1 Status of Metrology Procedures, MSATS and CATS

In our view, the Rules do not support assumptions contained in the Australian Electricity Market Operator's (**AEMO**) Embedded Network Guidelines,[1] and reflected in other documents published by the AEMO and the Australian Electricity Market Commission (**AEMC**),[2] that the Rules effectively allocate responsibility for embedded networks to the LNSP.

To the extent that provisions in such documents purported to empower or require the LNSP to be the Responsible Person for such metering installations (which we don't think they do), they would probably be beyond power.

### 2.2 Status of LNSPs currently performing tasks within embedded networks

To the extent that LNSPs currently issue NMIs (at the request of retailer Market Participants) for metering installations at connection points within embedded networks, it is not entirely clear to us that LNSPs are in fact obliged to do so under the Rules.

If an LNSP nevertheless proceeds to do so, then it is necessarily only doing so in its capacity as the LNSP for the geographical area in which the embedded network is located, not because it has some how or other become the Responsible Person for a metering installation at that connection point. In our view this is not in fact possible under the Rules as currently drafted (as indicated in 1.1 above).

Further, to the extent that some LNSPs may contractually agree to perform other tasks for metering installations within embedded networks that would typically be performed by a Responsible Person, such actions should nevertheless not be understood as being performed by the LNSP in the capacity of a "Responsible Person" under the Rules.

### 2.3 What impact (if any) does the contestability of metering arrangements have?

Whether or not contestable arrangements are put in place within an embedded network is entirely at the discretion of the embedded network operator and, absent any legislative requirements to the contrary, may be withdrawn at any time.

## 3. Conclusions

The AEMC's conclusion in its Rule Determination National Electricity Amendment (Provision of Metering Data Services and Clarification of Existing Metrology Requirements) Rule 2010 published 6 May 2010 (**Rule Determination**) that the Rules already adequately

[1] AEMO, Embedded Networks Guideline published 23 July 2009

[2] See, for example, Rule Determination National Electricity Amendment (Provision of Metering Data Services and Clarification of Existing Metrology Requirements) Rule 2010 published 6 May 2010, AEMO's Embedded Networks and Retail Competition Determination of 22 August 2009, the Metrology Procedure and the MSATS/CATS Procedures.

prescribe the role of the Responsible Person within embedded networks[3] appears to be misconceived.

As indicated above, the Rules do not currently empower or require the LNSP to act as Responsible Person for metering installations within embedded networks, nor do they provide for anyone else to act in that capacity.

Any amendment to the Rules to place this obligation on LNSPs should be subject to the LNSP being granted sufficient powers (or reaching agreement with embedded network owners and operators) to gain access to and control over the metering installation connection point on the embedded network.

# ADVICE

## 1. Embedded networks and the Responsible Person

### 1.1 LNSP's and Responsible Persons within embedded networks

The extent to which an LNSP can become the Responsible Person for a metering installation at a connection point is dealt with by Rule 7.2.3 as follows:

(a) Rule 7.2.3(a) provides that either the Market Participant or the LNSP (if the Market Participant accepts an offer from the LNSP to be the Responsible Person) is the Responsible Person for type 1-4 metering installations connected to or proposed to be connected to the LNSP's network.

(b) Rule 7.2.3(b) sets out a process whereby the LNSP becomes the Responsible Person for type 5-7 metering installations connected to or proposed to be connected to the LNSP's network.

In understanding the extent to which Rule 7.2.3 can apply to empower or require the LNSP to be the Responsible Person (for both type 1-4 and 5-7 metering installations) the following defined terms are critical:

- "connected" means that a physical link must be formed between the metering installation and the LNSP's network;
- "network" means the apparatus, equipment plant and buildings used to convey, and control the conveyance of, electricity to customers (whether wholesale or retail) excluding any connection assets; and
- in the context of an LNSP, "network" means the network owned, operated or controlled by that Network Service Provider.

When these several terms are considered together it is clear that irrespective of what type of metering installation is under consideration, the Rules only empower and require the LNSP to become the Responsible Person for those metering installations connected or proposed to be connected to the LNSP's network.

The question in the context of embedded networks then is whether metering installations within an embedded network are "connected to the LNSP's network". While the expression "embedded network" is not defined under the Rules it is well understood that an embedded

[3] Rule Determination National Electricity Amendment (Provision of Metering Data Services and Clarification of Existing Metrology Requirements) Rule 2010 published 6 May 2010, pages 24-25.

network is a network not owned and operated by an LNSP, but which is nevertheless connected to the LNSP's network.[4]

There can be no doubt that an embedded network is not part of an LNSP's network. It follows that:

- metering installations located within an embedded network are not connected to the LNSPs network; and
- the Rules do not empower, or require, the LNSP to be the Responsible Person for such metering installations.

This seems to us to be a reasonable position for the Rules to take because an LNSP does not own or control any of the relevant "connection points" within an embedded network and could not, without the cooperation and agreement of the embedded network owner, perform Responsible Person obligations at metering installations for those connection points.

### 1.2 Can anyone else be the Responsible Person for metering installations within embedded networks

#### (a) Type 1-4 metering installations

It is possible for a Market Participant who wishes to register (as the financially responsible Market Participant) for a connection point within an embedded network to effectively elect, under Rule 7.2.2, to be the Responsible Person for a metering installation within an embedded network for a type 1-4 meter.

This is because, under Rule 7.2.2(a), the Market Participant may themselves elect to be the Responsible Person or get the LNSP to do it (under Rule 7.2.3).

However, as we discussed in section 1.1 above, the LNSP cannot be the Responsible Person under Rule 7.2.3. Whether an LNSP might nonetheless agree to perform some or all of the tasks that a Responsible Person would perform for metering installations located within an embedded network (despite not being empowered or required to do so) is a matter we consider in section 2.2 below.

If a Market Participant does decide to become the Responsible Person for type 1-4 metering installations within an embedded network, it will need to engage its own Metering Provider under Rule 7.2.5 and generally comply with the requirements of chapter 7 of the Rules.

#### (b) Type 5-7 metering installations

For types 5–7 metering installations, the Rules:

- do not entitle the Market Participant to be the Responsible Person; and
- do not identify anyone other than the LNSP for the role of Responsible Person (but only, as indicated above, for metering installations connected to the LNSP's network).

In our view:

[4] See for instance, references to "embedded networks" in the Embedded Networks Guideline, the Metrology Procedure, the Embedded Networks and Retail Competition Determination of 22 August 2009 and the MSATS Procedures.

(i) as the LNSP cannot be the Responsible Person for metering installations within embedded networks; and

(ii) the Rules do not otherwise provide for any else to become the Responsible Person for type 5-7 metering installations,

no one is in fact empowered under the Rules to act as the Responsible Person for type 5-7 metering installations located within embedded networks.

## 2. Related issues

### 2.1 Status of Metrology Procedures, MSATS and CATS

We note that a number of AEMO's procedures and guidelines appear to have adopted the position that the Rules effectively make the LNSP the Responsible Person for metering installations within embedded networks (at least for metering installations that have become contestable).

There does not appear to us be any clear basis in the Rules to support this position. Rather, it appears an incorrect assumption has been made at some point that the Rules operate in this way. For example, AEMO's Embedded Network Guidelines lists, as a key assumption, that:

> Metering requirements and responsibilities for downstream NMIs [located within embedded networks] registered in MSATS are the same as for all other market NMIs under the Rules and the Metrology Procedure. Including if child meters are eligible to be manually read this will be the responsibility of the LNSP associated with the parent connection point.[5]

In our view, for the reasons we indicated above in section 1.1:

- the Rules do not support this assumption because metering installations within embedded networks are not connected to an LNSP's network; and
- to the extent that provisions in such documents purported to empower or require the LNSP to be the Responsible Person for metering installations (which we don't think they do), they would probably be beyond power.

### 2.2 Status of LNSPs currently performing tasks within embedded networks

#### (a) LNSPs issuing NMIs

We understand that LNSPs, on occasions, issue NMI's for type 1-4 metering installations for connection points within an embedded network, upon request from retailers who wish to register those connection points in the NEM.

We make the following observations about this:

(i) As indicated in 1.2(a) above, it is possible for a retailer Market Participant to elect to be the Responsible Person for a type 1-4 metering installation for a connection point within an embedded network.

(2) That Market Participant, as the Responsible Person for that embedded network connection point, might argue that, on the face of clauses 3.1(d) and (e) as literally drafted:

[5] AEMO, Embedded Network Guidelines, 23 July 2009, section 1.2, p4, Key Assumption 6.

(i) it is entitled to apply to the LNSP (for the geographical area in which the embedded network is located) for a NMI for a metering installation for that connection point, even though it is not connected to the LNSP's own network; and

(ii) the LNSP would then be obliged to issue one.

(3) However, it is not clear to us that clauses 3.1(d) and (e) should in fact be read in this way, given that the framework established for LNSP metering installation responsibility under Rule 7.3.2 clearly applies only to connections points on the LNSP's own network (as set out in 1.1 above).

(4) Nevertheless, if an LNSP does proceed to issue a NMI in response to such a request, then the LNSP is necessarily only doing so in its capacity as the LNSP for that geographical area, not because it has some how or other become the Responsible Person for a metering installation at that embedded network connection point which (as indicated under 1.1(a) above) is not in fact possible under the Rules as currently drafted.

**(b) LNSP's voluntarily undertaking Responsible Person tasks**

In our view, an LNSP may, if it so chooses, agree contractually with a Market Participant to provide some of the services that a Responsible Person might provide under chapter 7 of the Rules for metering installations within embedded networks. However, an LNSP cannot formally act in the role of the "Responsible Person" for metering installations in these networks as that role can only be conferred in accordance with Rules 7.2.2 and 7.2.3.

Fundamentally, it must be acknowledged that the role of the Responsible Person is a creature of statute, and can only come into being under the relevant provisions of the Rules. In the absence of the Rules providing for the creation and conferral of the role, it is not possible to become the "Responsible Person" as defined under the Rules.

To the extent that LNSPs undertake or perform tasks that would be performed by a Responsible Person it would be prudent for an LNSP to satisfy itself that it is in a position to do so before agreeing to perform such a task. That is, that the embedded network operator has given the LNSP a level of access and permission sufficient to afford the LNSP an appropriate level of control over the relevant metering installations and connection points to perform the obligation.

## 2.3 What impact (if any) does the contestability of metering arrangements have?

Leaving aside any jurisdictional specific arrangements for contestability in each jurisdiction, contestable arrangements in respect of a connection point can only be regulatorily required through the operation of Rules 7.2.2 and 7.2.3. These are the vehicles that both deliver mandatory contestability and circumscribe its limits.

This means that, within an embedded network, contestability can only be put in place if:

- the law requires it (Rules 7.2.2. and 7.2.3); or
- the embedded network operator voluntarily agrees to allow it.

This means that, leaving aside any State-based jurisdictional specific arrangements for contestability,[6] the Rules currently only allow for contestable arrangements within an

[6] Consideration of State based jurisdictional arrangements (such as those under the *Electricity Supply Act 1995* (NSW)) are beyond the scope of this advice

embedded network for type 1-4 metering installations – and only to the extent that a Responsible Person puts them in place.

Ultimately, whether a Responsible Person (Market Participant) is able to put contestable arrangements in place is entirely at the discretion of the embedded network operator. In the absence of any legally binding obligation to maintain contestable arrangements the embedded network operator could withdraw them at any time.

## 3. Conclusion

Based on the matters set out above, the AEMC's conclusion in its Rule Determination National Electricity Amendment (Provision of Metering Data Services and Clarification of Existing Metrology Requirements) Rule 2010, published 6 May 2010, that the Rules already adequately prescribe the role of the Responsible Person within embedded networks, appears to be misconceived.

The AEMC 's position that "the Commission does not consider that there is a 'gap' in the regulatory framework surrounding the Responsible Person for child metering points in embedded networks" appears to be based on some assumptions about the creation and allocation of Responsible Person obligations under the Rules, which are not in fact supported by the Rules.

As indicated above:

- the Rules do not currently require or empower the LNSP to be the Responsible Person for metering installations within embedded networks; and
- responsibility for metering installations within embedded networks are not currently addressed under the Rules.

To the extent that it is considered appropriate to impose Responsible Person obligations within embedded networks on an LNSP by changes to the Rules, those arrangements should not:

(a) be imposed in a way which is inconsistent with what the Rules already say about Responsible Person obligations; or

(b) seek to place mandatory obligations on the LNSP that the LNSP is not necessarily in a legal position to fulfil (because, for example, the LNSP needs the co-operation and consent of the embedded network owner, to gain access to the connection point). Such obligations would need to be expressed to be subject to (for example) the LNSP reaching satisfactory arrangements for access to and control over the connection point for the purposes of being responsible for the metering installation.

Please do not hesitate to contact either of us if you have any questions or would like to discuss any of the issues we've raised.

Yours sincerely

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