



9 October 2006

Dr John Tamblyn
Chairman
Australian Energy Market Commission
Level 16
1 Margaret Street
Sydney NSW 2000

**Draft Rule Determination
Chapter 7 – National Electricity Rules**

Dear Dr Tamblyn,

I refer to the *Draft Rule Determination* in respect of Chapter 7 of the National Electricity Rules and provide herewith our written submission and comments as allowed under Section 97 of the National Electricity Law.

Metropolis Metering Assets Pty Ltd (Metropolis) is a metering asset management business, accredited by NEMMCO as a Metering Provider for the installation, maintenance, testing and repair of mass-market (type 3 & 4) metering installations in accordance with the National Electricity Rules.

Draft Wording

The proposed wording for Clauses 7.2.2 and 7.2.3 is somewhat oblique and requires further revision.

The National Electricity Rules currently require the Retailer to be the Responsible Person for metering installations unless an offer is explicitly sought and accepted from an electricity Distributor to act as the Responsible Person.

Clause 7.2.2(aa) of the National Electricity Rules currently states that:

Each Local Network Service Provider is responsible for the provision of metering installations to Market Participants connected to, or proposing to connect to, the Local Network Service Provider's network in its local area and the installation and maintenance of those metering installations unless otherwise elected by the Market Participant.

But uncertainty is avoided because Clause 7.2.3(a) of the National Electricity Rules currently states that:

If a Market Participant elects not to request an offer from or does not accept the offer of the Local Network Service Providerthe Market Participant will be the responsible person for the metering installation.

The *Draft Rules* proposed by the Australian Energy Market Commission (the Commission) drop this important clarification and in so doing it is not clear when the Distributor actually *stops being the responsible person* if the Retailer does not accept an offer from the Distributor or if an offer from the Distributor is not sought at all.

The *Draft Rules* effectively work as follows:

“The Local Network Service Provider is the responsible personunless the Market Participant elects to be the responsible personfor a type 1, 2, 3 or 4 metering installation”in which case the “Market Participant may request in writing an offer from the Local Network Service Provider to act as the responsible person where a type 1, 2, 3 or 4 metering installation is, or is to be, installed”, which:

- *if not accepted*, means that “the Local Network Service Provider is the responsible person....unless the Market Participant elects to be the responsible personfor a type 1, 2, 3 or 4 metering installation”and so on; or
- *if accepted*, means that “the Local Network Service Provider becomes the responsible person” – which, effectively, it already is in the first place.

The wording also creates the incongruous situation that Market Participants ‘may’ request an offer from the Distributor for that part of the market that is open to competition – namely the provision of type 1-4 metering installations – but ‘must’ request an offer from the Local Network Service Provider for that part of the market that is closed to competition – that is, the provision of type 5, type 6 and type 7 metering installations. This doesn’t make sense.

Metropolis therefore recommends adoption of the wording suggested in Attachment A to eliminate confusion, properly meld the Chapter 9 derogations into the National Electricity Rules, and preserve the fundamental tenet that the Retailer be responsible for competitive metering in the first instance.

Responsibility for Metering Installation Upgrades

Metropolis has been established to *own* and operate remotely-pollled ‘smart’ meters across the National Electricity Market, providing Retailers and consumers with an efficient and cost-effective service provision alternative to the mass-market metering services provided by Distributors.

As noted by the Joint Jurisdictional Regulators:

The key advantage of alternative meter ownership arrangements is the potential to facilitate innovation, both in terms of the types of meters installed (as retailers and customers are not constrained to the distributor’s standard meter) and the way in which those meters are read.¹

While regulations encourage “investors who wish to consider the application of evolving technologies and processes that might be suitable for use in the national electricity market”².

¹ Joint Jurisdictional Review of Metrology Procedures: Final Report, October 2004 – page 12

² Metrology Procedure for Type 4 Metering Installations – page 2

Metropolis appreciates that 'meter churn' *will occur* in a competitive market where metering data is inaccessible (because reading protocols have not been shared), if the meter does not conform to market functional specifications or if a service provider's charges are commercially unacceptable. In such circumstances one would agree that swapping out the meter is perfectly justifiable to ensure that the electricity Retailer obtains what they need at the best possible price.

Competition will force *meter owners* – such as Metropolis – to behave competitively and combat the prevalence of meter churn in order not to lose capital. Inefficient market practises will be quickly extinguished and Retailers and customers will be shielded from the financial consequences of meter churn, where it occurs – losses being absorbed by the third party meter owner and its investors.

In its *Draft Rule Determination* the Commission notes:

In moving to translate the Chapter 9 derogations into Chapter 7 and in interpreting the JJR recommendations, significant comments of concern have been raised by market participants and industry stakeholders regarding NEMMCO's proposal to enable the FRMP, at the FRMP's discretion, to alter a type 5, type 6 or type 7 metering installation to a type 4 metering installation.³

(Clause 7.3.6) includes a provision in relation to the Commission's view that a FRMP who changes the classification of a type 5, 6 or 7 metering installation as a result of making it capable of being remotely read, should negotiate in good faith with the LNSP (if the LNSP is the responsible person) to ensure that the LNSP is reasonably compensated for the change in classification.⁴

Why should a Distributor be compensated for a bad investment decision?

If, in order to provide customers with a better service, meters installed by a Distributor must be replaced because they cannot be readily upgraded from type 5 to type 4 why should the Retailer be made to pay?

Why should the Retailer be penalised financially for a decision made by the Distributor to install a meter that the Retailer may not even have wanted in the first place?

And why should we, as a provider of competitive metering services, be placed in a situation where our customers are *effectively* locked-in to our competitors' services (through no fault of their own) so that we can't win substantial volumes of business?

We find the Commission's position in this regard extraordinary.

It is anti-competitive in the extreme and goes against the competition principles underlying distribution pricing arrangements, which must:

- promote competition in the provision of distribution services wherever practicable;
- facilitate a commercial environment which is transparent and stable; and
- regulate the non-competitive market for distribution services in a way which seeks the same outcomes as those achieved in competitive markets⁵.

The focus of Chapter 7 of the National Electricity Rules must not turn to compensating Distributors, but rather on providing electricity Retailers with an effective mechanism to avoid the unwanted installation of type 5 metering assets and provision of metering services.

³ Draft Rule Determination, 24 August 2006 – page 45

⁴ Ibid. – page 52

⁵ National Electricity Rules – Clause 6.1.1(b)

Of the six million or so metering installations presently in the National Electricity Market, approximately 98% of those are type 6 metering installations, many of which have been in use for decades and were paid off years ago.

Distributors should simply not be able to unilaterally upgrade those metering installations to type 5, with a full expectation of cost recovery, while Retailers are denied the opportunity to explore competitive alternatives for type 4 metering services.

By far the simplest way to overcome this impasse is to allow the Retailer to appoint themselves (or another person – see below) as Responsible Person for a connection point with an existing type 5, 6 or 7 metering installation, where the intention is to upgrade to a type 4 metering installation at a future point – in order to ensure that unwarranted costs are avoided in the first place.

Metropolis recommends inclusion of Clause 7.2.2(c) as suggested in Attachment B. This might be further enhanced by requiring that the meter may only be replaced with a type 4 meter.

As the Distributor is no longer the Responsible Person, it has no scope to change the metering assets or type of metering installation at the relevant connection point. The Metering Provider appointed by the Responsible Person becomes responsible for maintaining the existing type 5, 6 or 7 metering installation until it is upgraded to a type 4 metering installation – noting that the National Electricity Rules “allow the Responsible Person to engage different Metering Providers for different aspects of the metering services. For example, the Responsible Person may engage one Metering Provider to install the meter, another to test the measurement transformers, and a third Metering Provider to undertake routine maintenance”⁶ and yet another to upgrade the metering installation.

Each Metering Provider must maintain a *Metering Asset Management Plan*⁷ covering all metering installations to which a Responsible Person appoints them – thereby ensuring that the type 5, 6 or 7 metering installations remain compliant with the National Electricity Rules until such time as the upgrade occurs.

Ownership of the existing type 5, 6 and 7 metering assets remains with the Distributor and asset costs can continue to be paid to the Distributors accordingly. This precedent is well established – a large proportion of the contestable metering sites in the market today have instrument transformers owned by the Distributors but maintained by competitively appointed Metering Providers, for instance.

It must further be noted that the provision of type 5, 6 & 7 metering installations, under the Chapter 9 derogations, is subject to *economic regulation* in accordance with the principles set out in Clauses 6.10.3, 6.10.4 and 6.10.5 of the National Electricity Rules.

Clause 6.10.4(a) of the National Electricity Rules states that “the Jurisdictional Regulator is responsible for determining which, if any, distribution servicesshould be deemed to be prescribed distribution services and accordingly subject to economic regulation through the electricity distribution price review mechanisms operating in each state”.

⁶ A Guide to the Role of the Responsible Person, NEMMCO, September 2004 – page 2

⁷ Refer Metering Asset Management Plans - Information Paper, NEMMCO, 2005

The Victorian Essential Services Commission, for example, has determined that as the provision of type 5, 6 and 7 metering installations is the exclusive responsibility of the Distributors it will regulate them as:

...prescribed services. However, it will regulate these services separately to, and unbundled from, the regulatory arrangements applying to distribution use of system tariffs. The prescribed metering services that these new arrangements will apply to include:

- meter provision (the supply, installation and maintenance of metering equipment); and
- metering data services (the collection, processing, storage of, and provision of access to, metering data).⁸

Accordingly, in Victoria and other jurisdictions, it is inappropriate to require that “the parties must negotiate in good faith to ensure the Local Network Service Provider is reasonably compensated for the alteration to the metering installation” as proposed by the Commission in Draft Rule 7.3.6(g).

The form of economic regulation determined by the relevant Jurisdictional Regulator for type 5, 6 and 7 metering installations and services must factor in the likelihood that Retailers will upgrade metering installations to type 4, at their own volition, using competitive service providers.

Hence, it is far more important that the National Electricity Rules provide a clear mechanism for Retailers to place Distributors on notice when they do not wish to have type 5 meters installed – because the intention is to upgrade directly from type 6 to type 4 – than to provide for a model premised on “good faith” negotiation. Such a mechanism allows Jurisdictional Regulators to set Distribution prices far more effectively.

Economic Regulation of Type 4 Metering Installations & Services

The providers of contestable metering services, who are in competition with Distributors, require certainty that Distributor services will not be subject to economic regulation. Clause 6.10.4(a) of the National Electricity Rules allows Jurisdictional Regulators discretion in this regard.

The Victorian Essential Services Commission has determined “that the provision of (type 1-4) metering services ...for customers (tier one and tier two) with a remotely read interval meter are contestable excluded services”⁹ and are therefore not subject to economic regulation.

When the Commission determines that an excluded service is contestable, the Commission does not require a distributor to submit a statement of a proposed charge and terms and conditions for that excluded service under clause 16 of the distributor’s distribution licence. A decision that the services are non-contestable, therefore, means that a distributor would be obligated to offer these services to retailers for a regulated price and under standard terms and conditions. Conversely, a decision that the services are contestable means that a distributor may offer the services for a price that is not regulated.¹⁰

In making it’s final determination the Victorian Essential Services Commission stated:

...that there exists a robust market for the provision of metering services. Currently, there are 17 accredited metering data providers listed by NEMMCO and 20 registered category A and B metering providers. Within the market for metering services, distributors, retailers and a substantial number of third parties are all accredited to provide metering services. The

⁸ Electricity Distribution Price Review 2006-10, Final Decision Volume 1, Statement of Purpose and Reasons, October 2005 – page 503

⁹ Contestability of Certain Metering Services, Final Decision Paper, 18 January 2006 – page 10

¹⁰ Ibid. – page 3

Commission is aware that some distribution and retail companies have established their metering service businesses into stand-alone service providers. These metering service providers may be used to provide metering services both to the retailer or distributor's own customers, as well as other utilities.¹¹

Given this context, the economic regulation of type 1-4 metering services would be akin to legalised price fixing.

To avoid doubt, Metropolis considers that the position of the Victorian Essential Services Commission should be permanently extended to Chapter 7 of the National Electricity Rules with the inclusion of Rule 7.3.7 as suggested in Attachment C.

Responsible Person Contestability

The National Electricity Rules only allow the Retailer or the Distributor to act as the Responsible Person. However, there is no legitimate reason for this restriction. There are no particular qualifications required to act as the Responsible Person, and the role is neither accredited nor audited.

In other words, any *person*¹² should be able to offer to act as the Responsible Person, thereby creating a truly competitive market place.

At present, if a Retailer does not wish to be the Responsible Person for a Type 1-4 metering installation, they have no option under the National Electricity rules but to seek an offer from the Local Network Service Provider.

This is particularly relevant given the impending rollout of remotely-pollled interval meters across the mass-market in Victoria, and possibly nationally. Some Retailers have expressed reluctance to act as the Responsible Person for a mass-market rollout.

Needless to say, given the resulting lack of competition, Distributors will not necessarily be compelled to put the best deals on the table or to seek competitive offers from other Metering Providers.

The National Electricity Rules provide the incumbent electricity Distributors, all of which are accredited as Metering Providers, with a competitive advantage over independent Metering Providers such as Metropolis. A nexus that must be broken to promote efficiency and effective competition.

The National Electricity Rules set the precedent that a Market Participant may engage a third party to act as the Responsible Person. But there is no logical reason why that third party should only be a Distributor.

Metropolis therefore proposes that Market Participants be able to seek offers from and enter into agreements with any *person* to act as the Responsible Person where a type 1, 2, 3 or 4 metering installation is, or is to be, installed with the addition of Rule 7.2.4 as suggested in Attachment D.

As a competitive Metering Provider, Metropolis is more than prepared to offer its services within and across network areas in competition with Distributors and other Metering Providers, and to extend its offering to also act as the Responsible Person. This then puts us on an equal footing with Distributors who already have the ability under the National Electricity Rules to offer to be both the Responsible Person and Metering Provider.

¹¹ Ibid. – pages 5-6

¹² The National Electricity Law defines a person as “a body politic or body corporate as well as an individual”.

Close

In closing, we note the Commission's comments "that there was only one submission regarding the right of the FRMP to be the responsible person for types 5, 6 and 7 metering installations."¹³

For the record, Metropolis too opposes the extension of the derogations beyond the present expiry date of 31 December 2006, and has always been opposed to Distributors having any form of exclusivity for the provision of metering services.

Our response to the Draft Rule Determination is predicated on the basis that the *Joint Jurisdictional Review of the Metrology Procedures* recommended that the Distributors provide type 5, 6 and 7 metering services exclusively, and that the scope of the rule change proposed by NEMMCO is to implement the recommendations of the Joint Jurisdictional Review.

As the Commission now appreciates, there is a complication in creating a limited monopoly over type 5, 6 and 7 metering installations along-side a fully competitive market for type 1-4 metering installations. That complication centred on the treatment of costs incurred by Distributors if a meter is replaced through legitimate competitive options available to Retailers.

The only way to deal with that complication effectively is to provide Retailers with an effective mechanism to prevent Distributors from incurring unwarranted costs and, to provide Retailers with effective choice over who can act as the Responsible Person, as well as who can provide type 1-4 metering installation.

Hence, the approach to the National Electricity Rules we have suggested in this submission, which we believe balances the tension between the two opposing markets (ie. monopoly market -v- competitive market).

In considering this approach, we have been mindful that the vast majority of metering installations presently remain type 6 installations – so costs for upgrading to either type 5 or type 4 need only be incurred once, at the discretion of the Retailer, so that 'compensation' can be initially avoided.

Thank you for the opportunity to comment. Please do not hesitate to contact me should you wish to discuss any points that have been raised.

Yours sincerely,



Marco Bogaers
Managing Director

¹³ Draft Rule Determination, 24 August 2006 – page 59

Attachment A

7.1.4 Obligations of Market Participants to establish metering installations

- (a) Before participating in the *market* in respect of a *connection point*, a *Market Participant* must ensure that:
 - (1) the *connection point* has a *metering installation* and that the *metering installation* is registered with NEMMCO;
 - (2) either:
 - (i) it or the *Local Network Service Provider* is the responsible person under rule 7.2.2; or
 - (ii) it has sought an offer and, if accepted, entered into an agreement, under rule 7.2.3,
 - and
 - (3) prior to registration, a NMI has been obtained by the responsible person for that *metering installation*.

7.2.2 Responsibility for Metering Installations

- (a) The *Local Network Service Provider* is the *responsible person* for all type 5, 6 and 7 *metering installations* connected to, or proposed to be connected to, the *Local Network Service Provider's network*.
- (b) The *Market Participant* is the *responsible person* for all type 1, 2, 3 and 4 *metering installations* connected to, or proposed to be connected to, the *Local Network Service Provider's network* unless it accepts an offer from the *Local Network Service Provider* under clause 7.2.3(e).

7.2.3 Offers to Act as the Responsible Person

- (a) A *Market Participant* may request in writing an offer from the *Local Network Service Provider* to act as the *responsible person* where a type 1, 2, 3 or 4 *metering installation* is, or is to be installed.
- (b) If the *Local Network Service Provider* receives a request under clause 7.2.3(a), the *Local Network Service Provider* must:
 - (1) offer to act as the *responsible person* in respect of that *metering installation*; and
 - (2) provide to the *Market Participant* the terms and conditions on which the offer is made,no later than 15 *business days* after *Local Network Service Provider* receives the written request from the *Market Participant*.
- (c) A *Market Participant* is under no obligation to accept an offer provided by the *Local Network Service Provider* under clause 7.2.3(b).
- (d) If a *Market Participant* accepts an offer under clause 7.2.3(b) the *Local Network Service Provider* becomes the *responsible person* for the type 1, 2, 3 or 4 *metering installations*.
- (e) A *Local Network Service Provider* may not install a type 1, 2, 3 or 4 *metering installation* unless the *Market Participant* has accepted an offer under clause 7.2.3(d).
- (f) A *Market Participant* will be the *responsible person* for a *metering installation* if an agreement under clause 7.2.3(d) is terminated due to a breach by the *Market Participant*.

Attachment B

7.1.4 Obligations of Market Participants to establish metering installations

- (a) Before participating in the *market* in respect of a *connection point*, a *Market Participant* must ensure that:
 - (1) the *connection point* has a *metering installation* and that the *metering installation* is registered with NEMMCO;
 - (2) either:
 - (i) it or the *Local Network Service Provider* is the responsible person under rule 7.2.2; or
 - (ii) it has sought an offer and, if accepted, entered into an agreement, under rule 7.2.3,
 - and
 - (3) prior to registration, a NMI has been obtained by the responsible person for that *metering installation*.

7.2.2 Responsibility for Metering Installations

- (a) The *Local Network Service Provider* is the *responsible person* for all type 5, 6 and 7 *metering installations* connected to, or proposed to be connected to, the *Local Network Service Provider's network*.
- (b) The *Market Participant* is the *responsible person* for all type 1, 2, 3 and 4 *metering installations* connected to, or proposed to be connected to, the *Local Network Service Provider's network* unless it accepts an offer from the *Local Network Service Provider* under clause 7.2.3(e).
- (c) For the avoidance of doubt, nothing in clause 7.2.2(a) prevents a *Market Participant* from being the *responsible person* for an existing type 5, 6 or 7 *metering installation* where a type 1, 2, 3 or 4 *metering installation* is to be installed at a future date.

7.2.3 LNSP Offers to Act as the Responsible Person

- (a) A *Market Participant* may request in writing an offer from the *Local Network Service Provider* to act as the *responsible person* where a type 1, 2, 3 or 4 *metering installation* is, or is to be installed.
- (b) If the *Local Network Service Provider* receives a request under clause 7.2.3(a), the *Local Network Service Provider* must:
 - (1) offer to act as the *responsible person* in respect of that *metering installation*; and
 - (2) provide to the *Market Participant* the terms and conditions on which the offer is made,no later than 15 *business days* after *Local Network Service Provider* receives the written request from the *Market Participant*.
- (c) A *Market Participant* is under no obligation to accept an offer provided by the *Local Network Service Provider* under clause 7.2.3(b).
- (d) If a *Market Participant* accepts an offer under clause 7.2.3(b) the *Local Network Service Provider* becomes the *responsible person* for the type 1, 2, 3 or 4 *metering installations*.
- (e) A *Local Network Service Provider* may not install a type 1, 2, 3 or 4 *metering installation* unless the *Market Participant* has accepted an offer under clause 7.2.3(d).

Attachment B

- (f) *A Market Participant will be the responsible person for a metering installation if an agreement under clause 7.2.3(d) is terminated due to a breach by the Market Participant.*

Attachment C

7.3.7 Economic Regulation of Type 1-4 Metering Services

- (a) Type 1-4 metering services are contestable excluded services and not subject to economic regulation in any form.
- (b) Type 1-4 metering services include:
 - (1) meter provision (the supply, installation and maintenance of metering equipment); and
 - (2) metering data services (the collection, processing, storage of, and provision of access to, metering data).

Attachment D

7.1.4 Obligations of Market Participants to establish metering installations

- (a) Before participating in the *market* in respect of a *connection point*, a *Market Participant* must ensure that:
 - (1) the *connection point* has a *metering installation* and that the *metering installation* is registered with NEMMCO;
 - (2) either:
 - (i) it or the *Local Network Service Provider* is the responsible person under rule 7.2.2; or
 - (ii) it has sought an offer and, if accepted, entered into an agreement, under rule 7.2.3 or rule 7.2.4, and
 - (3) prior to registration, a NMI has been obtained by the responsible person for that *metering installation*.

7.2.2 Responsibility for Metering Installations

- (a) The *Local Network Service Provider* is the *responsible person* for all type 5, 6 and 7 *metering installations* connected to, or proposed to be connected to, the *Local Network Service Provider's network*.
- (b) The *Market Participant* is the *responsible person* for all type 1, 2, 3 and 4 *metering installations* connected to, or proposed to be connected to, the *Local Network Service Provider's network* unless it accepts an offer from the *Local Network Service Provider* under clause 7.2.3(d) or another *person* under clause 7.2.4(d).
- (c) For the avoidance of doubt, nothing in clause 7.2.2(a) prevents a *Market Participant* from being the *responsible person*, or accepting an offer from the *Local Network Service Provider* under clause 7.2.3(d) or, another *person* under clause 7.2.4(d) to be the *Responsible Person*, for an existing type 5, 6 or 7 *metering installation* where a type 1, 2, 3 or 4 *metering installation* is to be installed.

7.2.3 LNSP Offers to Act as the Responsible Person

- (a) A *Market Participant* may request in writing an offer from the *Local Network Service Provider* to act as the *responsible person* where a type 1, 2, 3 or 4 *metering installation* is, or is to be installed.
- (b) If the *Local Network Service Provider* receives a request under clause 7.2.3(a), the *Local Network Service Provider* must:
 - (1) offer to act as the *responsible person* in respect of that *metering installation*; and
 - (2) provide to the *Market Participant* the terms and conditions on which the offer is made, no later than 15 *business days* after *Local Network Service Provider* receives the written request from the *Market Participant*.
- (c) A *Market Participant* is under no obligation to accept an offer provided by the *Local Network Service Provider* under clause 7.2.3(b).
- (d) If a *Market Participant* accepts an offer under clause 7.2.3(b) the *Local Network Service Provider* becomes the *responsible person* for the type 1, 2, 3 or 4 *metering installations*.

Attachment D

- (e) A *Local Network Service Provider* may not install a type 1, 2, 3 or 4 *metering installation* unless the *Market Participant* has accepted an offer under clause 7.2.3(d).
- (f) A *Market Participant* will be the *responsible person* for a *metering installation* if an agreement under clause 7.2.3(d) is terminated due to a breach by the *Market Participant*.

7.2.4 Offers to Act as the Responsible Person by another person

- (a) A *Market Participant* may request in writing an offer from any *person* to act as the *responsible person* where a type 1, 2, 3 or 4 *metering installation* is, or is to be, installed.
- (b) If a *person* receives a request under clause 7.2.4(a) that *person* is under no obligation to offer to act as the *responsible person* in respect of that *metering installation*, but if an offer is made it must provide the terms and conditions on which the offer is made.
- (c) A *Market Participant* is under no obligation to accept an offer provided by a *person* under clause 7.2.4(b).
- (d) If a *Market Participant* accepts an offer under clause 7.2.4(b) the *person* becomes the *responsible person* for the connection point at which the type 1, 2, 3 or 4 *metering installation* is, or is to be, installed.
- (e) A *person* may not install a type 1, 2, 3 or 4 *metering installation* unless the *Market Participant* has accepted an offer under clause 7.2.4(d).
- (f) A *Market Participant* will be the *responsible person* for a *metering installation* if an agreement under clause 7.2.4(d) is terminated due to a breach by the *Market Participant*.