



26 April 2013

**Lodged online – Project reference code ERC0153**

Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Dear Commissioners,

**Submission to the National Electricity Amendment (Access to NMI standing data) Rule 2013 (Ref: ERC0153) Consultation Paper**

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Australian Energy Market Commission's (the **AEMC**) National Electricity Amendment (Access to NMI standing data) Rule 2013 Consultation Paper (the **Consultation Paper**). Who accesses information through the National Metering Identifier (NMI), and for what purpose it is used, is of great interest to us as the personal consumer information held within the meter is directly related to consumer privacy.

**About Consumer Action**

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal assistance, litigation services and financial counselling to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

**Consumer protections at risk**

Consumer Action is concerned that some aspects of energy market reform are proceeding without the consumer protections required to ensure the efficacy of those reforms keeping pace. Energy services are becoming more complex with new technologies and service providers entering the traditional 'energy market'. Many new services are being enabled by the rollout of smart meters and smart grids, along with digital technology and as such the way in which consumers receive services are changing. Beyond simply the supply of energy, new services are being made available both inside and outside the home. Importantly, new providers both commercial and non-commercial, in addition to retailers and distributors, will seek to engage directly with consumers to deliver these services. While there may be substantial benefits to these reforms (including, for example, greater competition, service offerings, and market efficiency), the consumer protections that apply to third parties are not on a par with those that apply to registered market participants such as retailers. We strongly support the AEMC's

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recommendation from its *Power of Choice* review that the National Energy Customer Framework be amended to regulate third parties who provide energy services. In our view, this amendment must proceed ahead of other reforms enabling more information to third parties.

The rule change request by EnergyAustralia relates to access to NMI standing data under the National Electricity Rules by retailers and their authorised agents and is seeking to clarify retailer obligations following an AER compliance bulletin related to “how the AER will treat confidentiality requirements for energy, metering and NMI standing Data”. The goal of the clarification is to “allow the authorised agents to perform consumer acquisition and other relevant services on behalf of a retailer” and amend the NER to permit retailer authorised agents to access NMI standing data.

While we understand a consumer’s consumption data will still be protected at this time, we note that other personal details such as the location of the NMI (the physical address) will potentially be available to non-financially responsible retailers and retailer agents. As such, it is essential that it is clear what role these ‘agents’ will play in the market and what reason they or the non-financially responsible retailer will need this information (or any other information) to fulfil their function. As the consultation paper notes, the AEMC is guided by the national electricity objective and the ‘long term interests of consumers’—it appears to us that the proposal may further retailers’ objectives to more effectively market its services, rather than consumer interests.

Under the National Energy Retail Law and the Energy Retail Code in Victoria, any agent operating on the retailer’s behalf must abide by the regulations and that ultimately the retailer is responsible for the relationship with the customer. That is, should a third party breach energy consumer protections, the retailer is responsible and a consumer may have a remedy against a retailer notwithstanding the third party being responsible for the breach. Despite this, we have significant concerns about both the incentives on third parties to comply with consumer protections, and the ability of retailers to ensure its third parties comply with those protections. Our concerns with third parties operating as agents of energy retailers has been influenced by the those engaged in door-to-door marketing on a retailer’s behalf. In our experience, door-to-door marketers regularly flout both the energy specific laws but also general consumer protections by, for example, not leaving appropriate materials at the door, pressuring or harassing consumers into agreeing to a sale, misleading consumers, ignoring ‘do not knock’ stickers, or behaving in a way which constitutes unconscionable conduct.

We are particularly concerned with this issue given that the rule change request has been submitted by EnergyAustralia. EnergyAustralia has recently faced prosecution in the Federal Court in relation to its door-to-door activities and conduct across Victoria, NSW and Queensland from July 2011 to August 2012. EnergyAustralia outsourced its door-to-door marketing to an ‘agent’ to act on their behalf, however the court action alone suggests that it has been unable to sufficiently manage its relationships with the third parties, resulting in breaches of consumer protections and subsequently poor outcomes for consumers. While EnergyAustralia has recently ceased unsolicited door-to-door sales, any future customer acquisition or other activity conducted by third parties acting as agents of Energy Australia, is an ongoing concern. Should their agents be able to access customer information via the NMI, there are serious questions about whether energy retailers can sufficiently manage their relationships with their agents and therefore whether consumers are adequately protected.

Further, the risk with enabling third parties, via energy retailers or directly, to access any standing data from the NMI opens up new questions. As noted above, we have concerns that the third parties entering the marketplace are not required to abide by energy consumer protections, such as the National Energy Customer Framework. We consider that without direct obligations to do so, the misuse or misrepresentation of data by third parties may be much more difficult to address..

Finally, we have concerns that this rule change has implications for consumer privacy, which we have not considered. We suggest that the AEMC directly engage privacy advocates, such as the Australian Privacy Foundation, before proceeding with its decision.

**Recommendation 1:** We recommend the Commission consider the practical difficulties associated with ensuring third parties acting on behalf of retailers comply with energy market rules.

**Recommendation 2:** We recommend that any party accessing data from the NMI be subject to the full suite of consumer protections available under energy specific legislation. That is, the AEMC should proceed with amending the National Energy Customer Framework so that it governs third parties providing energy services before proceeding with this rule change.

Please contact Janine on 03 9670 5088 or at [janine@consumeraction.org.au](mailto:janine@consumeraction.org.au) if you would like to discuss these matters further/have any questions.

Yours sincerely

**CONSUMER ACTION LAW CENTRE**



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