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Dear Stuart,

Draft Rule Determination, Victorian Jurisdictional Derogation - Advanced Metering Infrastructure, Project Reference: ERC0159

1. Introduction and overview

The Victorian Distribution Businesses (DBs)¹ welcome the opportunity to lodge this submission in response to the AEMC's draft determination on the rule change proposal submitted by the Minister for Energy and Resources (Victoria). The effect of the proposed rule change would be to extend for up to three years an existing derogation in Victoria from some of the metering provisions in chapter 7 of the NER.

The Commission's draft determination concludes that the rule change proposed by the Victorian Government should be adopted, with some minor amendments relating to the commencement date, triggers for expiry and definitions. The Victorian DBs strongly support the Commission's analysis and conclusions. In particular, the Commission concludes that current arrangements in Victoria lack the following features that are critical for supporting effective competition in the provision of AMI meters²:

- Arrangements for open access and common communication standards, including the basis for charging for access.
- Certainty over rights to use the related services enabled by the meter, including the ability to prioritise commands sent to the meter.
- Arrangements to prevent inefficient replacement of meters.
- Arrangements for the transfer from distribution businesses to retailers of existing contracts for meter provider and meter data provider services.

As a result of these gaps in the existing arrangements in Victoria, the Commission concludes that allowing the existing derogation to lapse and relying on existing frameworks would be likely to result in inefficient outcomes. Furthermore, the

¹ CitiPower and Powercor Australia, United Energy, SP AusNet and Jemena Electricity Networks.

² AEMC, draft determination, Victorian Jurisdictional Derogation - Advanced Metering Infrastructure, 19 September 2013, pages 26 and 27.

Commission concludes that allowing competition to be introduced from 31 December 2013³:

- would be unlikely to achieve very much in the way of better third party access to AMI meters or more competitive provision of meters and related services; and
- would be likely to result in uncertainty about the ability of existing systems and processes to accommodate a change in responsible person, creating costs and additional risks.

The Victorian DBs strongly support the Commission's findings. In particular, the benefits of introducing competition from 31 December 2013 are likely to be modest at best, while the potential costs of allowing competition to be introduced, without the necessary regulatory framework, business protocols and systems in place, are likely to be significant. Weighing up the costs and benefits indicates clearly that it would be highly imprudent to allow the derogation to lapse.

In our submission to the Commission's earlier consultation paper⁴, the Victorian DBs also highlighted potential safety and reliability issues that would arise if competition were introduced in advance of industry processes, including ESV safety cases, being settled. In relation to reliability issues, the Victorian DBs explained that unless the necessary business protocols and B2B arrangements are put in place, distributors will not have sufficient information or authority to resolve outages in a timely manner. For example:

- A distributor will be unaware whether an apparent customer outage is due to remote de-energisation by the retailer.

A distributor responding to an outage would not be authorised to correct a fault with a retailer-provided AMI meter. In both cases, the customer may be subject to additional costs to cover the distributor's wasted truck visit, as well as the inconvenience and potential costs associated with the delay in supply restoration.

The Commission's draft determination concludes that there is conflicting evidence from stakeholders regarding the consequences for safety and reliability, if the derogation were allowed to lapse. In effect, the Commission explains⁵ that it already has sufficient grounds for accepting the proposed rule change, and therefore there is no need to opine on the network reliability and safety issues.

While the Victorian DBs concur with the Commission's logic that there is no need to address the network reliability and safety issues if there are already sufficient reasons to accept the rule change proposal, it would be equally valid to apply the precautionary principle in considering these matters. In particular, the precautionary principle would place the burden of proof on those advocating the introduction of competition to demonstrate that there is no risk to safety and reliability if the derogation were allowed to lapse.

³ Ibid, page 27.

⁴ Joint submission by the Victorian Electricity Distribution Businesses to the AEMC's Consultation Paper, 1 August 2013, pages 10 and 11.

⁵ AEMC, draft determination, Victorian Jurisdictional Derogation - Advanced Metering Infrastructure, 19 September 2013, pages 47 and 50.

In applying the precautionary principle, it is important to note that the introduction of competition in the provision of AMI meters to small customers would effectively transfer activities currently undertaken by distributors to retailers or their agents. Without establishing business protocols and B2B arrangements to facilitate these changes, there is a strong likelihood that service and performance gaps will emerge. While it may be possible to address these gaps as they arise, in the Victorian DBs' view, this approach would expose customers - including in particular life support customers - to unacceptable risks. The Victorian DBs continue to regard these issues as further reasons to support the proposed rule change.

The Victorian DBs' submission to the Commission's earlier consultation paper provided a detailed analysis of the difficulties that would arise if the derogation were allowed to lapse on 31 December 2013. The points raised in our earlier submission remain valid, so it is not necessary to repeat those points here. Instead, this submission provides high-level commentary on the following matters:

- The Commission's assessment approach in its draft determination;
- The Commission's principal reasons for accepting rule change proposal; and
- The timeframe for extending the derogation.

Each of these matters is addressed in turn below.

2. The Commission's assessment approach

The Victorian DBs strongly support the Commission's assessment approach, which considers the likely costs, benefits and efficiency impacts of two options⁶:

- (A) not making the proposed rule, allowing retailers to elect to be the responsible person for AMI meters, and therefore introducing competition in small customer metering services in Victoria; or
- (B) making the proposed rule, and therefore continuing distribution business exclusivity for AMI meters until a national framework for competition in small customer metering and related services is established.

In undertaking this assessment, the Commission addresses the following issues⁷:

- the adequacy of existing frameworks for competition in small customer metering and related services, and therefore the likely impacts of allowing the existing derogation to lapse, including impacts on consumer confidence and engagement;
- the incremental benefits of introducing small customer metering competition in Victoria before a national framework is established, including impacts on innovation in metering and related services; and
- the appropriate duration of a new derogation.

The Victorian DBs consider that these issues, together with the Commission's assessment approach, provide a sound framework for assessing the rule change proposal. In accordance with section 88(1) the National Electricity Law, the

⁶ Ibid, page 15.

⁷ Ibid, page 15.

Commission must consider whether the rule change proposal will or is likely to contribute to the achievement of the National Electricity Objective, which is set out below:

“The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

(a) price, quality, safety, reliability and security of supply of electricity; and

(b) the reliability, safety and security of the national electricity system.”

In the context of the rule change proposal to extend the metering derogation in Victoria, it is helpful to focus on the following particular aspects of the National Electricity Objective:

- The objective is concerned with promoting efficient investment in, and efficient operation and use of, electricity services. The objective is clearly focused on *efficiency*, not *competition*. While competition may facilitate efficient outcomes, it does not guarantee them, nor is competition an objective in itself. Importantly, if the derogation were allowed to lapse on 31 December 2013, competition would be promoted at the expense of efficiency. This is because competition would be introduced without the regulatory framework and business processes that are necessary to foster efficient outcomes.
- The objective is also concerned with the long term interests of consumers. The objective is not concerned with short term benefits, nor is it concerned directly with the commercial interests of the industry participants. While some industry participants may have a narrow commercial interest in expediting the introduction of competition, the National Electricity Objective directs the Commission to consider the long term interests of customers.

In many respects, the submissions that advocate the early introduction of competition focus on the immediate short term benefits, at the expense of introducing a regulatory framework, business systems and processes that are required to promote the long term interests of consumers. These submissions seek to put short term benefits ahead of the long term interests of consumers – and as such do not promote the National Electricity Objective.

The Victorian DBs support the Commission's assessment approach because it gives appropriate weight to the National Electricity Objective, and its focus on efficiency and the long term interests of consumers.

3. Commission's principal reasons for accepting rule change proposal

In this section, the Victorian DBs comment on the Commission's reasoning for extending the derogation. The Victorian DBs regard it as more constructive to focus on the reasoning presented in the draft determination, rather than responding to all of the matters raised in stakeholders' submissions.

The Commission sets out three principal arguments for extending the derogation:

- Absence of a viable framework;
- National arrangements are being developed; and

- Establishing Victorian-specific arrangements would be inefficient.

Each of these arguments is discussed in turn.

3.1 Absence of a viable framework

The Commission concludes that the existing Victorian framework is not "fit for purpose" in terms of facilitating effective competition in the provision of AMI meters. The Commission comments as follows⁸:

"There is not currently a clear and viable framework for commercial contestability in AMI metering and related services in Victoria. AMI meters have recently been deployed to the majority of small customers in Victoria, meaning that they provide a high degree of functionality and assets are near the beginning of their lives. The framework for contestability needs to allow the benefits of that investment to be realised. It needs to enable competition in meter-related services, as well as competition to provide the meters themselves. In the absence of such a framework, expiry of the existing derogation could result in uncertainty about the ability of systems and processes to apply after a change in responsible person, which might limit consumer benefits from the existing investment."

The Victorian DBs agree with the Commission that as AMI meters are currently at the beginning of their asset lives, the efficiency benefits from introducing competition are likely to be very limited. Furthermore, it is inefficient to replace highly functioning and recently installed AMI meters. The Victorian DBs note that a properly designed regulatory and commercial framework would inhibit the inefficient replacement of assets, such as AMI meters. On the other hand, if the appropriate regulatory and commercial arrangements are not put in place, then inefficient asset replacement may well occur.

It is noteworthy that some submissions argue that the introduction of competition will deliver lower metering prices and enhanced services. Other submissions, which also advocate allowing the existing derogation to expire, suggest that the volume of competitively provided meters will be very low, at least initially. The pertinent question, however, is whether allowing the early introduction of competition will deliver genuine efficiency benefits that are in the long term interests of consumers.

In relation to this latter point, the Commission correctly notes that a framework for contestability needs to be developed if the benefits from the substantial investment already made in AMI meters are to be realised. This framework needs to unbundle metering services from the provision of meters in order to facilitate competition in both activities. If competition were introduced in the absence of such a framework, then limited, if any, efficiency benefits will be achieved. While retailers or their agents may find it commercially viable to compete in the provision of AMI meters, customers will ultimately not be the beneficiaries of that competition.

In addition to the absence of an appropriate framework, the Commission has also recognised that there are capability gaps in the business systems and processes that are required to facilitate competition. The Victorian DBs strongly agree with the Commission's observations in this regard. As explained in the Victorian DBs' submission to the Commission's Consultation Paper, introducing competition without the necessary business systems and processes in place will impose unacceptable costs and risks on the industry and its customers.

⁸ Ibid, page 12.

3.2 National arrangements are being developed

The Commission explains that a national framework to facilitate competition in the provision of AMI meters is currently being developed. The Commission describes the national framework in the following terms⁹:

“A national framework for competition in small customer metering and related services is being progressed in response to the Power of Choice review. The framework will establish a minimum agreed functionality for meters, open access and common communication standards, certainty over rights to use the related services enabled by the meter and a metering coordinator role to protect investments in metering, thereby addressing the risk of inefficient meter replacement when customers switch retailer.”

The Victorian DBs note three important points from the Commission’s reasoning:

- The national framework is currently being developed and, in the context of the National Electricity Market, it is appropriate that these arrangements apply in Victoria.
- The national arrangements must include protection arrangements and a transition plan for all sub-160 MWh customers. This will require recognition and possible harmonisation of the alternative definitions of “small customers” that are presently defined in the Consumer Administration and Transfer Solution (CATS), NECF and the Energy Retail Code in Victoria.
- The national framework is fundamentally different from the existing arrangements in the rules, which would apply if the derogation in Victoria were allowed to lapse.

All of these issues are important, but the third point raises a fundamental objection to the proposition that the derogation should be allowed to lapse on 31 December 2013. In particular, the Commission’s Power of Choice report concluded¹⁰ that there should be open access to metering data and competition in the provision of meter-related services, which is independent of meter ownership. This design will facilitate competition – and more importantly will do so in a manner that delivers genuine benefits to customers.

The basic difficulty with the proposal to allow the existing derogation to expire is that it would advance a model of competition that is contrary to the design set out in the Commission’s Power of Choice report. In other words, it would accelerate a form of competition that the Commission has already concluded would not promote the long term interests of consumers. The orderly introduction of competition not only requires appropriate systems and processes to be in place, but it also requires an appropriate regulatory framework. At present, that framework is still in its early development phase.

⁹ Ibid, page 12.

¹⁰ AEMC, Final Report, Power of Choice Review - giving consumers options in the way they use electricity, 30 November 2012, pages 110 and 111.

3.3 Establishing Victorian-specific arrangements would be inefficient

The Commission explains that the timing for the development of the national arrangements does not support the expiry of the Victorian derogation on 31 December 2013. The Commission explains this point as follows¹¹:

“Although SCER has agreed to progress the Power of Choice recommendations, and to progress smart meter customer protections, the details of how these frameworks will be implemented will not be resolved in time for Victoria to adopt them when the current derogation expires. Victoria would therefore need to establish its own specific arrangements for competition in metering and related services and its own customer protections, if the current derogation lapses. This would result in an inefficient duplication of costs that are being incurred through the national process. It would also be likely to create an undesirable divergence from national arrangements, increasing costs for retailers and providers of metering and related services that compete in multiple jurisdictions.”

The Victorian DBs agree with the Commission that it would be inefficient to develop Victorian-specific arrangements to introduce competition in the provision of AMI meters. In particular, there would be an inefficient duplication of effort in developing arrangements in Victoria and nationally. Furthermore, additional resources would be required to achieve convergence if the Victorian arrangements did not precisely mirror the national arrangements.

A further question arises as to whether Victorian-specific arrangements could be developed in time to facilitate competition from 31 December 2013. The Victorian DBs' earlier submission to the Commission's Consultation Paper explained that the necessary changes could not be introduced within that timeframe. Furthermore, the Victorian DBs queried whether industry players would devote the necessary resources to develop arrangements for Victoria, in the knowledge that these arrangements would ultimately need to transition to the national regime.

The Victorian DBs also note the Commission's concern that pursuing a Victorian solution could have detrimental impacts on the development of a national process¹². In particular, the Commission commented that if the industry sinks resources into developing a Victorian solution:

- This may create a reluctance to develop a new set of national arrangements based on a different set of principles which are consistent with the Power of Choice recommendations; and
- Resources may be diverted from the national process.

From the Victorian DBs' perspective, it is a moot point whether the development of a Victorian-specific solution would undermine or be undermined by the parallel development of the national arrangements. More importantly, the key conclusion is that it would be both impractical and inefficient to develop Victorian-specific arrangements. Furthermore, if the derogation were allowed to lapse on 31 December 2013, the resulting competition would proceed in the absence of effective regulatory and commercial arrangements such as those set out in the Commission's Power of Choice review.

¹¹ AEMC, draft determination, Victorian Jurisdictional Derogation - Advanced Metering Infrastructure, 19 September 2013, pages 12 and 13.

¹² Ibid, page 28.

4. Timeframe for extending the derogation

The Commission makes the following observations in relation to the Victorian Government's proposed timeframe for extending the derogation¹³:

“The Victorian Government's proposal of three years as the fallback duration is based on an expectation that the national arrangements be established by the end of 2015, while allowing some contingency in case the national process is delayed.

The fallback duration needs to be at least as long as the expected time for the establishment of national arrangements. It also needs to allow for time to put in place the transitional arrangement for Victoria to migrate to the national framework.”

The Victorian DBs' submission to the Commission's Consultation Paper indicated the companies' support for the proposed extension of the derogation. In particular, the Victorian DBs noted that the proposed timing should be sufficient for the national framework to be settled and for the Victorian industry to establish the necessary systems and processes to transition to those arrangements.

The Victorian DBs welcome the Commission's conclusion that the derogation should be extended for three years as a fallback, in case the national arrangements do not proceed as expected. The Victorian DBs also support the Commission's findings that the derogation needs to allow sufficient time for the development effort to establish workarounds to ensure the alignment of the national framework with the specifics of the Victorian rollout situation, and to put in place transitional arrangements for Victoria to migrate to this framework¹⁴.

As previously indicated, the Victorian DBs will continue to work constructively with the Victorian Department of State Development, Business and Innovation (DSDBI), AEMO and the Commission, and industry working groups to meet the timeframes envisaged by the Minister, as reflected in the draft determination.

5. Concluding comments

The Victorian DBs welcome the Commission's draft determination to extend the existing metering derogation in Victoria. The Commission has adopted an analytical framework that focuses on whether the National Electricity Objective would be promoted either:

- (a) by allowing the existing derogation to lapse on 31 December 2013, or
- (b) by extending the derogation.

In considering this question, the Commission has reaffirmed the framework that it developed in its Power of Choice review, which unbundles the provision of AMI meters from other market activities, most notably the provision of enhanced metering services and retail competition.

At a fundamental level, if competition in Victoria were allowed to proceed on 31 December 2013 it would do so under an inadequate framework, which differs from that recommended in the Commission's Power of Choice review. Competition would also proceed in the absence of the necessary industry systems and processes, and

¹³ Ibid, page 37.

¹⁴ Ibid, page 37.

regulatory arrangements that protect the interests of customers. In these circumstances, it would not be prudent or efficient to allow competition to proceed.

In a number of cases, advocates for introducing competition do so on the grounds that the volume of meters will be small and therefore any difficulties will be manageable. The Victorian DBs do not regard it as practical or prudent to proceed with competition in the hope that the volume of retailer-provided meters is manageably low.

For the reasons set out in the draft determination, it is clear that the long term interests of consumers are best served by the orderly introduction of competition through the application of nationally developed arrangements for all sub-160 MWh customers. The draft determination provides a realistic timeframe for the development of these arrangements and for their implementation in Victoria. On this basis, the Victorian DBs strongly support the draft determination.

The DBs appreciate the opportunity to make this submission and would welcome the opportunity to discuss any of the matters raised in this submission. If you have any questions, please contact Matthew Serpell on 03 9683-4469 or by email at MSerpell@powercor.com.au

Yours sincerely,



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on behalf of the Victorian Electricity Distribution Businesses