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Mr Steven Graham
Chief Executive Officer
Australian Energy Market Commission

Dear Mr Graham

Consultation Paper – National Electricity Amendment (Access to NMI standing data) Rule 2013

1. Introduction

EnergyAustralia appreciates the opportunity to comment on the Consultation Paper – National Electricity Amendment (Access to NMI standing data) Rule 2013. As proponent of this rule change proposal EnergyAustralia obviously has strong views on this change which it believes will deliver benefits to the market and consequently to consumers.

As outlined in its proposal, EnergyAustralia considers that the Australian Energy Regulator's (AER) interpretation of 7.7a of the National Electricity Rules (the Rules) as outlined in Compliance Bulletin No. 8, while technically valid, does not adequately reflect the intent of the Rules or consider market arrangements which have developed over time as market participants have operated under an alternative interpretation. EnergyAustralia acknowledges the AER's requirement to enforce the Rules on the basis of their own interpretation and consequently have moved for an amendment to ensure that industry and regulators are in agreement as to their meaning. The rule change proposal seeks to amend the rules so that the benefits to industry and consumers that have been realised under the previous interpretation can continue to flow to the market in a manner consistent with the National Electricity Objective.

EnergyAustralia notes that the MSATS User Guide, although not an enforceable instrument, clearly contemplates the use of third parties to undertake NMI discoveries for the purposes of quoting customers. We note AEMO's intention to amend the User Guide and suggest that, rather than remove reference to retailers working with agents, that the Guide be amended to provide direction on clause 7.8.2 of the Rules which outlines requirements for the protection of confidential information. Although Compliance Bulletin No. 8 refers to customer privacy issues, EnergyAustralia believes that there is a low risk of actual privacy breaches (ie, misuse of customer information) occurring and that the overriding concern is compliance with 8.6.1 of the Rules which deems certain information to be confidential. EnergyAustralia contends that any privacy and customer protection issues are covered by the contractual relationship between retailers and third party service providers which are contemplated by the Rules in the absence of explicit provisions to preclude them.

The development and maintenance of a set of Rules which appropriately balance consumer protections with flexibility to allow industry to innovate and operate under the most efficient arrangements is pivotal in delivering optimal outcomes to customers. EnergyAustralia considers that the relationships that had developed under the Rules prior to the issuance of Compliance Bulletin No. 8 were evidence that this balance had been appropriately struck. If

the processes which underpin these arrangements are prohibited the increase in customer acquisition costs stemming from a requirement to “in-source” all sales activity or find alternative solutions will ultimately be passed on.

2. The Purpose of NMI standing data and access arrangements

Retailers use NMI standing data at various stages of the customer lifecycle. Initially, a retailer (or their third party service provider) will require sufficient information to determine a prospective customer’s connection characteristics and network tariff in order to provide them with an appropriate quote. Following the initial contact with the customer, retailers require ongoing access to NMI standing data for the purposes on registration of customers and ongoing management (dealing with network tariff changes, connection of distributed generation etc) and potentially for dispute resolution.

What is considered the minimum information required for retailers to undertake their market functions, for example, sale and supply of electricity as opposed to consumer acquisition activities?

EnergyAustralia considers that all the information currently included in the NMI standing data schedule¹ is required for the ongoing provision of services to customers. Although the information contained in some fields of the NMI Standing Data can be determined from other fields, for example, the Jurisdiction Code can also be determined from the Street Address or NMI field (Vic NMI’s begin with 6 or V, NSW with 2 or N etc), the entire suite of information currently available provides a complete snapshot of the metering installation and reduces the potential for user error and increases speed and efficiency in searching for relevant data.

Although not every field of information may be used in the ongoing management of any particular customer, to suggest that some information is required while other fields will not be required is a dramatic oversimplification of the role of a retailer. One retailer function which is commonly outsourced is dispute resolution as a third party can provide a degree of impartiality which the retailer may find hard to replicate, and this is one area where access to the full suite of NMI Standing Data is critical.

Should the NER be amended to provide for retailer authorised agents access to NMI standing data or should other mechanisms be considered? If the NER should be amended, what provisions should be put in place?

Given the range of activities that some retailers outsource to third parties, the development of an alternative mechanism which would satisfy the range of data needs appears problematic. When the range of retailer business models are considered it can be assumed that across the industry there is third party involvement at all stages of the lifecycle (ie, with a need to access the full suite of information contained in the NMI standing data), then any alternative mechanism would essentially equate to a full replication of this aspect of MSATS and would need to be developed at considerable cost to industry.

3. Retailer authorised agents access to NMI standing data

Many businesses will outsource aspects of their operations that may or may not be core business to third parties that are able to perform these functions more efficiently. These arrangements are generally governed by contracts which penalise the service provider for poor or non-compliant performance to ensure that there is some recourse against it as it will generally be the principle that the retailer will be directly answerable to regulators, law enforcement or the customer if there has been improper activity.

In instances of third parties being used by retailers for customer acquisition activities, the AER has no direct enforcement power against the third party service provider, but can penalise the

¹ AEMO, NMI Standing Data Schedule Version 1.0, Effective Date 1 July 2012.

retailer for the actions that the third party service provider has undertaken on their behalf. Through this relationship there is still considerable scope for the AER to correct improper or non-compliant behaviour. The retailer understand that it is likely to be primarily liable for non-compliance when they enter into an agreement with a third party and consequently it is the responsibility of each retailer to ensure that they can hold their third party service provider to account where the AER cannot.

Are the existing regulatory arrangements and retail contractual arrangements with their suppliers sufficiently clear and robust to allow retailer agents access to NMI standing data (and hence MSATS)?

Prior to the AER's issuing of Compliance Bulletin No. 8 EnergyAustralia (and evidently other retailers) considered the regulatory framework, when considered in concert with supporting documentation such as AEMO's MSATS User Guide, sufficiently clear to allow third party access to NMI standing data, hence the development of the current operating models which see retailers contracting out various aspects of customer interaction and management. This view is borne of the legal principle *Qui mandat ipse fecissi videtur*, he who commands [a thing to be done] is held to have done it himself, meaning that the retailer is like to bear the risk of enforcement action if their third party service provider is found to be acting improperly. In contracting with third party service providers to undertake activities requiring access to NMI standing data, EnergyAustralia was aware that it may be liable for any compliance breaches by its third party service provider. This provided EnergyAustralia (and other retailers) considerable incentive to actively manage contracts and monitor the performance of third party service providers.

The AER's concerns outlined in Compliance Bulletin no. 8 serve as a timely reminder for retailers to ensure that they have appropriate controls in place where they have allowed third party service providers to access NMI standing data. Ultimately however, when acting on behalf of a retailer third party service provider is bound by the same regulatory requirements as a retailer by virtue of the provisions of the contract which require compliance with laws and regulations.

EnergyAustralia contends that in the absence of a real, demonstrable problem with the behaviour of third party service providers, existing contractual frameworks are sufficient to ensure that there is no misuse of confidential information.

Should the NER be amended to provide for retailer authorised agents access to NMI standing data or should other mechanisms be considered? If the NER should be amended, what provisions should be put in place?

As previously stated, EnergyAustralia considers that it is not clear that the NER currently prevents third parties from accessing NMI standing data if they are doing so under the auspices of a party who is explicitly permitted under the NER. The AER's interpretation as communicated through Compliance Bulletin No. 8 differs from this view and we consider that it is in the interest of consumers and the industry as a whole to remove any ambiguity in this area in order to preserve the arrangements which have developed in the introduction since retail contestability began.

EnergyAustralia's preferred position is for the inclusion in the Rules of an explicit provision which states that for the purposes of the Rules a reference to a retailer should refer to a retailer or authorised third party.

Noting that there are a suite of consumer protection obligations on retailers, should additional requirements be placed on their service providers who are performing consumer acquisition activities on the retailer's behalf?

Although retailers' third party service providers are not directly regulated by the AER (or jurisdictional regulator in non-NECF states) it is in the interest of the retailer to ensure that the third party service provider complies with all regulatory requirements. This is done through the

contractual arrangements which will usually include penalties such as withholding of payment, passing through liability for penalties or even termination if the third party service provider is found to breach regulatory obligations that the retailer must comply with.

Further to this, EnergyAustralia's agreements require the contracted party to comply with privacy and confidentiality provisions. We would suggest that other prudent retailers would include similar provisions in their contracts with third parties.

If additional obligations are required for authorised retailer agents, what arrangements should be put in place?

Given the AER's ability to indirectly influence third party service providers' behaviour by exerting regulatory influence on the principal retailer, EnergyAustralia does not consider that these parties should be subject to additional obligations.

4. Summary

EnergyAustralia views the AER's Compliance Bulletin No.8 as a timely reminder to all retailers that they are taking on compliance risk by contracting with third parties to undertake activity on its behalf. In the absence of any demonstrable customer detriment arising from the instances of third party service providers acting for retailers under the current Rules we consider that it is appropriate to allow this practice to continue under a revised set of Rules which make it explicit that the practice is permitted in order to ensure that ambiguity is eliminated and to allow the efficiencies delivered by the current arrangement to continue.

We believe that the contracting out of customer acquisition or related activities to organisations with specialist skills provides considerable benefits in terms of efficiency and the standard or service provided to customers which outweigh the potential for issues arising from the AER's inability to directly enforce regulatory requirements on retailers' service providers .

If you would like to contact me about this submission, please call me on (03) 8628 1731.

Yours sincerely



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