

26 April 2013

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Commissioners,

Reference ERC0153: National Electricity Amendment (Access to NMI standing data) Rule 2013

Thank you for the opportunity to respond to the Australian Energy Market Commission (AEMC) Consultation Paper on National Electricity Amendment (Access to NMI standing data) Rule 2013 (the Paper).

Simply Energy is a leading energy retailer servicing Victoria, South Australia, New South Wales and Queensland. Like many energy retailers, Simply Energy relies on an outsourcing model for a number of business functions, including customer acquisition channels, management of current customer accounts and market transactions. These functions and the cost efficiencies that derive from using an outsourcing model rely on our suppliers having direct access to MSATS and NMI standing data.

Failure to implement a Rule change that permits our suppliers to have this direct access will have a dramatic impact on how Simply Energy conducts its business. It would mean that we would need to bring in-house all of the functions that we currently outsource. This would significantly increase the cost to us of undertaking our retail activities, potentially reducing our competitiveness against the first tiers who have economies of scale advantages that second tiers do not have and causing significant price increases for our customers. Simply Energy does not believe that this outcome is in the long term interests of energy customers.

The problems with the current Rules

There are two problems with the current Rules:

- (1) The list of those who can access NMI Standing Data set out under clause 7.7(a) of the National Electricity Rules does not include agents acting on behalf of a retailer.
- (2) The list under clause 7.7(a) does not include prospective retailers (or their agents) who may be seeking to win a customer site from the financially responsible Market Participant.

We explain each of these problems in the next two sections.

The list of those who can access NMI Standing Data set out under clause 7.7(a) does not include agents acting on behalf of a retailer.

The Australian Energy Regulator's (AER's) Compliance Bulletin¹ raised concerns around the current practice of providing suppliers direct access to NMI standing data for the purpose of undertaking retail services and customer acquisition activities on a retailer's behalf.

While every retailer is different, typical practice across the industry has been for retailers to engage an agent(s) to perform customer acquisition and customer management services on the retailer's behalf. Retailers have done this because of the cost savings that outsourcing can generate. However, for the outsourcing model to work, the retailer's agent(s) needs to use NMI Standing Data so that the agent(s) can give the

¹ Australian Energy Regulator 2012 *Compliance Bulletin No. 8: Confidentiality Requirements for Energy, Metering and NMI Standing Data*, June

customer an accurate quote and/or respond effectively and accurately to any questions that a customer may have. It is more efficient and cost effective for the retailer and the agent if the agent can access MSATS directly rather than go through the retailer to obtain this data. If the agent(s) were required to go through the retailer, then the role of the agent really becomes redundant and the retailer may as well undertake the activity in-house. However, in-house delivery of these services would significantly increase costs.

Compliance Bulletin No. 8 stated that the AER interpreted clause 7.7(a) as an exhaustive list of parties able to access NMI standing data. Clause 7.7(a) states that only persons entitled to access data are:

- 1) Registered Participants with a financial interest in the metering installation or the energy measured by that metering installation;
- 2) Metering Providers who have an agreement to service the metering installation, in which case the entitlement to access is restricted to allow authorised work only;
- 3) financially responsible Market Participants in accordance with the meter churn procedures;
- 4) the Network Service Provider or providers associated with the connection point;
- 5) AEMO and its authorised agents;
- 6) an Ombudsman where the Ombudsman has received a complaint to which the data is relevant;
- 7) a financially responsible Market Participant's customer upon request by that customer to the financially responsible Market Participant for information relating to that customer's metering installation;
- 8) the AER or Jurisdictional Regulators upon request to AEMO; and
- 9) Metering Data Providers who have been engaged to provide metering data services for that metering installation.

The AER ruled that this list did not include agents acting on behalf of retailers and that therefore these agents were not authorised to access MSATS directly and use NMI Standing Data.

To preserve the cost efficiencies generated by outsourcing, the AEMC needs to expand the list set out under clause 7.7(a) so as to accommodate agents acting on behalf of a retailer.

The list under clause 7.7(a) does not include prospective retailers (or their agents) who may be seeking to win a customer site from the financially responsible Market Participant.

EnergyAustralia's (EA's) Rule Change Request² identified a further issue with clause 7.7(a). The list of persons authorised to access NMI Standing Data only extended to a retailer that had a financial interest in a site. In other words, the retailer had to be the financially responsible Market Participant (FRMP) for a site to be able to access the NMI Standing Data for that site (clause 7.7(a)(3)).

The way clause 7.7(a) is written prohibits prospective retailers (or their agents) from accessing NMI standing data for customer acquisition activities.

To win a customer from another retailer, a retailer (or its agents) must be able to accurately quote the customer. However, pricing the supply of energy services for a customer relies on the information contained within the NMI Standing Data. For example, a retailer needs to know the type of customer they are, the network tariff the customer is on and whether they have a solar installation or controlled load requirement. As the industry moves toward time-of-use pricing, the retailer will also want to know what their consumption profile looks like so that the customer is offered a tariff that best suits that profile.

² EnergyAustralia 2012 *Rule Change Request to the AEMC*, 15 November

A customer will know some of this information but not all of it. For example, it is unlikely that a customer will know which network tariff they are on. It also makes the sale process unpleasant for the customer if they have to assemble all of this information for themselves and this is likely to be barrier to customer switching.

If prospective retailers (or their agents) cannot access NMI Standing Data, then it will severely curtail retail competition.

We share EA's concerns that clause 7.7(a) is not sufficient to allow prospective retailers (or their agents) access to NMI Standing Data for the purpose of customer acquisition. To facilitate competition, the AEMC needs to amend clause 7.7(a) to accommodate customer acquisition activities.

EA's proposed solution

EA's proposed solution to both of these problems is to modify clause 7.7(a) by inserting the following subclause at the end of clause 7.7(a):

10) Retailers and/or their agents acting on the behalf of a registered participant in providing retail services on behalf of/or to the registered participant.

And insert in the Rules where appropriate the following clause:

A retailer may perform any obligation under the NER directly or by an agent, and for that purpose, every act or omission of a retailer's agent is deemed to be an act or omission of the retailer.

Simply Energy supports EA's proposed solution and believes that it will address both the current problems with clause 7.7(a).

Response to the AEMC's questions

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)?

Simply Energy requires access to the NMI Standing Data to be able to undertake its market functions. When it was developed, the NMI Standing Data was formulated so that it provided the data that distributors and retailers needed to undertake their responsibilities.

Outsourced partners can perform multiple functions, such as customer acquisition, support functions for current customers, and market transactions. These agents require access to all NMI standing data to enable them to properly understand a customer's circumstances and respond to customer or market requests in an efficient and accurate manner. Simply Energy would not support the restriction of agents' access to a subset of NMI standing data, as this would materially impact agents' ability to perform a range of functions.

Are the existing provisions of the NER ambiguous regarding retailers ability to access and use NMI standing data for the purposes of providing accurate quotes to consumers? If yes, what changes are required to the NER?

As discussed above, there are two problems with the current Rules:

- (1) The list of those who can access NMI Standing Data set out under clause 7.7(a) of the National Electricity Rules does not include agents acting on behalf of a retailer.
- (2) The list under clause 7.7(a) does not include prospective retailers (or their agents) who may be seeking to win a customer site from the financially responsible Market Participant.

Simply Energy supports EA's proposed solution and believes that it will address both the current problems with clause 7.7(a).

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)?

As discussed above, Simply Energy's agents currently access NMI Standing Data (and MSATS), and existing contractual arrangements reflect this practise. The AER has already indicated their interpretation that clause 7.7(a) does not entitle retailers' agents access to NMI Standing Data. Simply energy agrees that this should be amended in order for this practise to be considered compliant.

Should the NER be amended to provide for retailers' 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?

The NER should be amended in line with EA's Rule change proposal for the reasons expressed above.

Should additional requirements be placed of retailers' service providers who are performing consumer acquisition activities on retailer's behalf?

No, because it confuses retailer contractual arrangements with their agents and blurs accountability for meeting the obligations imposed by regulation. If both parties are subject to requirements under regulation then it can become difficult to determine who is at fault should an incident occur, and thus who should be held accountable. There is clear and unambiguous accountability for compliance where retailers are solely responsible for the obligations under national regulation.

Retailers have provided agent access to MSATS for many years without incident. This would suggest that current practises are sufficient to ensure compliance.

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

No additional obligations should be imposed without a clear statement of the market failure they are addressing.

Placing regulatory requirements directly on retailer's agents would impose unnecessary burden on these providers and related retailers, while delivering minimal benefit. It would also act as a barrier to new entrant service providers.

Concluding comments

If you would like to discuss this submission further, please contact Jenna Polson on 03 8807 1171, or jenna.polson@simplyenergy.com.au.

Yours sincerely

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