



EnergyAustralia

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Mr John Pierce
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Mr Pierce

Rule Change Request – Clause 7.7(a)

In response to the AER's Compliance Bulletin No. 8, EnergyAustralia submits the attached Rule Change Proposal to allow for the continuation of existing sales and marketing practices which requires retailers and their agents to access NMI standing data for the purposes of quoting.

EnergyAustralia has consulted with stakeholders and believes that there is considerable industry support for the proposal as it will deliver benefits for retailers and their customers and will promote the National Electricity Objective.

Should you have any questions in relation to this issue please call me on (03) 8628 1731.

Yours sincerely

Joe Kremzer
Regulatory Manager
EnergyAustralia

Introduction

In the Australian retail electricity market, the key information required by consumers in order to make appropriate decisions regarding their choice of retailer or product is the information regarding their tariffs. Contestable retail markets in Australia have operated on the basis that it was in the interest of consumers that this information could be accessed by retailers to facilitate competition. This approach was based on an interpretation of provisions of the National Electricity Rules (NER) which allowed retailers and their agents to access information on behalf of customers even though this action was not specifically authorised under the NER. This interpretation had remained unchallenged by regulators since the commencement of the National Electricity Market (NEM).

The traditional means of customer acquisition when Full Retail Contestability (FRC) commenced was for a retailer to contact a customer (or vice versa) to provide an accurate quote of the customer's rates based on their network tariff. In order to determine the appropriate rates to be quoted, the retailer would access the Market Settlements and Transfer System (MSATS) to obtain National Meter Identifier (NMI) standing data which includes the network tariff. MSATS is a secure system which requires retailers to log in to obtain this information.

As competition has increased, retailers have sought to diversify their customer acquisition channels and have contracted with agents to undertake this work on their behalf. In order to enable them to quote customers on their behalf retailers entering these arrangements have assigned MSATS logins to their agents. This was a widely adopted practice, and retailers operated on an understanding that the NER contained an implied permission to do so.

In addition to the diversification of customer acquisition channels, retailers particularly the smaller 2nd tier retailers have introduced innovative business models which include the outsourcing of traditional back office functions. Some of these functions require the outsourced service provider to access MSATS.

The Australian Energy Regulator (AER) became aware of a retailer allocating MSATS user IDs to a third party who was contracted with to provide customer acquisition services, and issued Compliance Bulletin Number 8, which outlined a view that this practice was contrary to the provisions of the NER. In this Compliance Bulletin, the AER indicated that it was aware that the provision of MSATS access to agents acting on behalf of retailers was common industry practice and declared that except where aggravating circumstances existed, it would not take enforcement action until 31 December 2013, after which time, the approach will be reviewed.

The AER's Compliance Bulletin was based on an interpretation that Section 7.7(a) of the NER was an exhaustive list of the parties who may access MSATS and the circumstances under which they may do so. EnergyAustralia has conducted its own analysis which indicates that the industry is operating on further assumptions that, in light of the AER's interpretation was at risk of being declared erroneous. Under the AER's "exhaustive list" interpretation, it is apparent that there is no basis within the NER for a retailer to access the standing data, including network tariff, for a NMI where it is not already the Financially Responsible Market Participant (FRMP). This interpretation has serious implications for competition as it inhibits the consumer's access to information which will help them make an appropriate decision about their electricity pricing.

EnergyAustralia notes that Clause 3.13.12 of the NER allows for retailer access to standing data through the existence of the NMI Standing Data Schedule, however the perceived inconsistency between this provision and 7.7(a) casts some uncertainty around the right of retailers to access MSATS where it is not currently the FRMP.

Although Compliance Bulletin Number 8 deals only with the issue of 3rd party access to MSATS, if applied consistently, the AER's interpretation threatens to unravel practices which have underpinned retail contestability since its inception. EnergyAustralia proposes that the NER be changed to provide market participants with some certainty with regard to the ongoing nature of their operations, and preserve the ability for customers to choose their retail supplier based on accurate pricing information. Energy Australia also requires the NER to be changed to be more explicit to allow for third party access to MSATS for both customer acquisition and management of outsourced back office functions as detailed below.

Proposal

In June 2012 the AER issued Compliance Bulletin Number 8 - Confidentiality requirements for energy, metering and NMI standing data, indicating an opinion that agents acting on behalf of retailers are precluded from accessing customer standing data by virtue of clause 7.7(a) of the NER.

Clause 7.7(a) states:

The only persons entitled to access energy data or to receive metering data, NMI Standing Data, settlements ready data or data from the metering register for a metering installation 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 developed under clause 7.3.4(j);
- (4) the Network Service Provider or providers associated with the connection point;
- (5) AEMO and its authorised agents;
- (6) an Ombudsman in accordance with paragraphs (d), (e) and (f);
- (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 or in accordance with clause 7.14.1A(c)(6).

Third Party Access to MSATS

It is common industry practice for retailers to engage agents to market to customers, and as part of that engagement provide access to MSATS for the purposes of conducting NMI discoveries to enable accurate quoting to customers. This practice is critical to operations in Victoria, where with the number of available network tariffs, soon to be increased further with the introduction of flexible pricing under the Advanced Meter Infrastructure (AMI) program, makes it a prerequisite for a prospective retailer to gain the customer's tariff information in order to provide applicable pricing. As other jurisdictions move to roll out AMI only tariffs it will further increase the reliance on MSATS access in order to provide applicable pricing.

It is also widespread industry practice for retailers to engage third party service providers to provide traditional back office functions, which may require access to MSATS. It is critical for such retailers to be able to maintain MSATS access for their contracted back office providers for effective operation of their business and providing services to their customers.

The Compliance Bulletin notes that the MSATS Introduction Guide¹ contemplates the provision of MSATS access to agents or third party providers of retailers, and until the issuance of the Compliance Bulletin it was assumed that the lack of an express provision precluding this practice, coupled with the provisions in the Introduction Guide, implied approval. Based on this understanding, the practice of providing MSATS access to agents, and back office providers, under strict compliance undertakings, has become common place and underpins the business model of many retailers.

The AER's Compliance Bulletin proposes amendments to the Introduction Guide to align it with the NER, however EnergyAustralia proposes that the NER be amended to reflect what it believes to be their true intent by making explicit provision for 3rd party access to MSATS.

Retailer Access

Following the issuance of the Compliance Bulletin, EnergyAustralia identified a further, related issue that must be addressed. Although the Compliance Bulletin focuses on 3rd parties, EnergyAustralia believes that the provisions of 7.7 do not actually state that retailers, who are not FRMP, are able to access Standing Data for the purposes of quoting customers. As outlined above, this is accepted industry practice, and is vital in terms of facilitating competition as it allows customers to receive accurate quoting from prospective retailers. EnergyAustralia considers that this is anticipated by the NER however it should be explicitly stated to avoid regulatory confusion and preserve this practice which underpins consumer choice in the market.

If, as the AER's Compliance Bulletin suggests, 7.7(a)1-9 is an exhaustive list of the parties and circumstances under which MSATS can be accessed, it follows that a retailer who is seeking NMI standing data for the purposes of quoting a prospective customer, even at the customer's request via accessing the retailers website to enquire about rates, has no right to do so. A prospective retailer will generally have no financial interest (until such time as a contract commences) or be the financially responsible market participant, the two relevant conditions for a retailer to access the standing data.

Statement of Issue

Although there is currently no suggestion from the AER that retailers do not have the right to access standing data for quoting purposes, EnergyAustralia is concerned that such a conclusion can be made from the interpretation of S7.7(a). In light of this, EnergyAustralia propose that it be made explicit in the NER that the right exists for retailers to access MSATS, in order to reduce uncertainty and the need for future NER changes.

With regard to the issue of 3rd party access, EnergyAustralia notes the AER's concerns around potential data security and privacy issues arising from wider access to MSATS than is explicitly stated in the NER. These potential issues are mitigated by the fact any

¹ MSATS Introduction Guide V9.04 http://www.aemo.com.au/Electricity/Policies-and-Procedures/Market-Settlement-and-Transfer-Solutions/~/_media/Files/Other/electricityops/MSATS_Intro_v9.04%20pdf.ashx

party accessing MSATS data would be bound by privacy and consumer legislation within their commercial agreements with retailers. Further, in entering into a contractual agreement with a third party to undertake sales and marketing or back office activity, the retailer assumes the compliance risks associated with any misconduct on the part of the third party.

Although agents of retailers are not directly licensed or authorised under regulatory frameworks, their conduct is still subject to the requirements set in jurisdictional customer protection regulation, Australian Consumer Law, and potentially the National Energy Customer Framework if it is introduced in Queensland, New South Wales, South Australia and Victoria. This requirement is based on the legal principle which dictates that a principal will be liable for the actions of its agent as long as the agent or contractor acts within the scope of a commercial agreement.

The practice of providing MSATS access to third party sales and marketing agents and outsourced back office service providers has been widely undertaken within the industry and was deemed consistent with the intent of the NER and has occurred without demonstrable customer or market detriment. Consequently, EnergyAustralia proposes that the NER make explicit the fact that retailers, and agents acting on their behalf, are permitted to access standing data for the legitimate purpose of conducting relevant retailing activities, including but not limited to;

- Customer acquisition,
- Billing and settlements,
- Customer transfer &
- Other retailer functions as required.

EnergyAustralia considers the issues to be addressed to be twofold.

Although this request is made in direct response to the AER's Compliance Bulletin, the issue raised by the AER is considered secondary to the fact that the NER do not specifically provide a right for retailers other than the FRMP or those with a financial interest to access NMI standing data. EnergyAustralia's proposed solution is to make explicit in 7.7(a) of the NER that a retailer who is not the FRMP may, with the customer's consent, access NMI standing data.

The secondary issue, is that raised by the AER in its Compliance Bulletin with regard to retailers providing access to agents and third parties. EnergyAustralia believe that there is no reason that agents of retailers should be prohibited from accessing NMI standing data based on the argument that their conduct can be policed by proxy, through the contracting retailer. For the avoidance of doubt, EnergyAustralia proposes that a retailer's right to access NMI standing data be explicitly extended to authorised agents of that retailer or third parties acting on their behalf.

Costs/Benefit Analysis

Given that the proposed NER change would simply seek to reinforce existing industry practice the overwhelming benefit comes in the form of avoided costs arising from retailers changing business models as a result of the AER's interpretation or a concern that the AER may extend this interpretation. Should the NER change, as proposed in this submission, be rejected that this will have a detrimental impact on competition and choice in the market as a result of consumers being unable to access relevant information.

Retailers seek to capitalise on the efficient outcome above by structuring business arrangements in a manner which they believes provides them with the best outcomes in terms of customer service or in pursuit of other business objectives. In many instances

these arrangements involve contracting with third parties. The arrangements are made on the basis that these third parties have the ability to access MSATS, as implied by the NER and MSATS Introduction Guide.

Given the AER's recent interpretation of the NER, a number of retailers will be required to restructure or develop in-house functionality for services that are currently provided by third parties in order to comply with the NER leading to higher costs which will ultimately be passed on to consumers. In instances where the business does not deem it economic to alter its operations in this manner, in the instance of acquisition activities, third parties may continue to sell to customers without the benefit of MSATS access. In order to ensure that customers are provided with the appropriate rates, the agents will be required to provide a range of rates relating to the various tariff types leading to customer confusion.

EnergyAustralia is unable to identify any costs arising as a result of the proposed changes as it would not lead to any change to current industry practice.

Alternatives for acquisition activities

Although customer switching can be achieved without retailer (or authorised agent) access to NMI standing data, the alternatives that this scenario presents are clearly less efficient than the current arrangements. In the absence of an ability to access standing data, retailers are faced with two methods of quoting the customer.

The first of these involves providing the customer with a range of rates, one of which will be relevant. In Victoria particularly, there is a range of network tariffs that a customer may be assigned, and retailers, or their authorised agents, would generally be required to quote three different options. Each of these tariff options have specific characteristics which would need to be explained to the customer which is clearly a less efficient outcome than the status quo. Although providing three tariff options would cover the majority of situations, there is always the possibility that a customer would be on a less common tariff and may be quoted incorrectly as a result.

The other possibility is that retailers would be required to ask the customer a series of questions about their supply characteristics in order to determine the customer's network tariff. The Essential Services Commission of Victoria has recognised that this is a burden on consumers and dictates in Guideline 19² "*The specified retailer must not: (a) require the customer to provide technical information, such as the customer's consumption, retail tariff, network tariff, distribution area, national metering identifier or meter installation registration number.*" Once again, this option would have a detrimental competition by acting as a barrier to consumer switching.

National Electricity Objective

The National Electricity Objective (NEO), as stated in the National Electricity Law is:

² Guideline 19. Energy Price and Product Disclosure
<http://www.esc.vic.gov.au/getattachment/07ce79a3-5277-453f-a4ea-7669974e0223/Guideline-No-19-Price-And-Product-Disclosure.pdf>

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 –

- 1. price, quality, safety, reliability, and security of supply of electricity; and*
- 2. the reliability, safety and security of the national electricity system*

Given that the current practice that the proposed NER change seeks to preserve is crucial to maintaining an efficient competitive market EnergyAustralia submits the proposed NER change promotes the National Electricity Objective.

1. Price

EnergyAustralia considers that the proposed NER change promotes the NEO to the extent that failure to implement the proposed NER change, which is only required in order to maintain current industry practice, would expose consumers to additional costs associated with significant industry change. This is in contravention of *“the long term interests of consumers of electricity with respect to price...”*, Further, failure to adopt the proposed NER change would result in the realisation of additional costs by retailers to adapt their processes and systems in order to continue to maintain current industry practice. These costs would ultimately be borne by consumers and as previously stated have a material impact on competition.

Quality

No impact identified.

Safety

No impact identified.

Reliability

No impact identified.

Security of supply

No impact identified.

2. the reliability, safety and security of the national electricity system

No impact identified.

As the NER change seeks to simply formalise what is currently accepted industry behaviour, it can be demonstrated that the proposal is not contrary to the NEO.

Conclusion

While EnergyAustralia supports the AER’s work to ensure compliance with the NER, it is concerned that the interpretation outlined in Compliance Bulletin Number 8 has the potential to undermine the effective operation of the competitive retail market. In light of this we urge the AEMC to commence the NER change process to provide for greater certainty of market arrangements in order to deliver the optimal outcome for consumers.

A handwritten signature in black ink, appearing to read 'Joe Kremzer', with a long horizontal stroke extending to the right.

Joe Kremzer
Regulatory Manager
Energy Australia

Proposed text for NER change.

Insert 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.

Insert where appropriate - 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.

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