



Australian Energy Market Commission

RULE DETERMINATION

National Electricity Amendment (Access to NMI Standing Data) Rule 2013

Rule Proponent
EnergyAustralia

8 August 2013
For and on behalf of the Australian Energy Market Commission

**RULE
CHANGE**

Inquiries

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About the AEMC

The Council of Australian Governments (COAG), through its then Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. In June 2011, COAG established the Standing Council on Energy and Resources (SCER) to replace the MCE. The AEMC has two main functions. We make and amend the national electricity, gas and energy retail rules, and we conduct independent reviews of the energy markets for the SCER.

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Summary of draft rule determination

The Australian Energy Market Commission (AEMC or Commission) has determined to make this draft rule determination to clarify the entitlement of retailers to National Metering Identifier (NMI) Standing Data. The Commission considers the changes under the draft rule determination will promote the efficient delivery of services and facilitate retail competition. Consumers will benefit from these changes by allowing them to be provided with accurate information, which would enable them to decide which retail offer is best suited to them.

NMI Standing Data is the information related to a customer's connection point. The information is about the physical location and properties of the meter, which includes the applicable network tariff and the consumer's consumption threshold bands. It does not include the customer's consumption data. In order for a retailer to provide an accurate quote to a consumer it requires access to NMI Standing Data.

EnergyAustralia's rule change request seeks to clarify ambiguities and uncertainty under the National Electricity Rules (NER) with regards to retailers' entitlement to NMI Standing Data.

A second issue raised by the rule change request is whether retailers should be authorised to disclose NMI Standing Data to its service providers (including agents of retailers). The Commission notes that it is common business practice for retailers, or any business, to use service providers to perform business retail functions. The Commission considers that where service providers are acting on behalf of retailers, retailers should be able to disclose NMI Standing Data to them to undertake the relevant functions. As NMI Standing Data is classified as confidential information under the NER, the draft determination also amends the confidentiality provisions to permit retailers to disclose NMI Standing Data to their service providers.

The draft rule determination does not address the issue of third party service providers offering general products and services or acting on behalf of consumers. This issue will be addressed in a separate rule change arising from the AEMC's Power of Choice (PoC) review.

The Commission has determined it should make, with amendments, the rule proposed by EnergyAustralia (the draft rule). The draft rule specifically:

- introduces a new rule under rule 7.7 of the NER which entitles retailers to NMI Standing Data. This rule specifies that the retailer's entitlement is subject to them doing whatever may be required under the applicable privacy legislation;¹

¹ For the purposes of this draft rule determination we refer to retailers. However, the draft rule uses the phrase '*Customer* who engages in the activity of selling electricity to end users' to describe retailers as the defined term "retailers" in the NER only applies in jurisdictions that have applied the National Energy Retail Law (NERL) as a law of their jurisdiction.

- introduces a new clause under rule 8.6 of the NER that authorises retailers to disclose NMI Standing Data to their service providers; and
- makes necessary and consequential amendments to the NER to facilitate retailers' entitlement to NMI Standing Data and authorisation to retailers to disclose NMI Standing Data to their service providers.

The Commission notes that NMI Standing Data is provided through systems managed by the Australian Energy Market Operator (AEMO). The draft rule also provides for a transitional provision that enables AEMO subject to a final rule being made, to amend its systems and procedures under a simplified consultation procedure.

The AEMC welcomes submissions on this draft rule determination, including the draft rule, by 19 September 2013.

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1 Energy Australia's rule change request

1.1 The rule change request

On 13 November 2013, Energy Australia (EA) (rule proponent) made a request to the Australian Energy Market Commission (Commission) to make a rule regarding retailers (and their authorised service providers)² access to NMI Standing Data (rule change request).

NMI Standing Data is the information related to a connection point³ at which supply of electricity for consumption occurs. NMI Standing Data information includes, but is not limited to: applicable network tariff, consumption threshold bands, loss factors, physical location and other data related to the physical properties of the metering installation at the connection point. NMI Standing Data does not include the customer's consumption at a connection point.⁴

1.2 Rationale for rule change request

In this rule change request the rule proponent seeks to clarify the existing arrangements under the NER regarding retailer (and their authorised service providers) access to NMI Standing Data. Specifically, EA is seeking to address:

- Prospective retailer's⁵ rights to access NMI Standing Data. EA has raised concerns that there is potentially an inconsistency in the NER regarding the rights of such retailers to access NMI Standing Data. Currently, rule 7.7(a) of the NER sets out the parties that are entitled to access NMI Standing Data, which does not include prospective retailers. Meanwhile, clauses 3.13.12 and 3.13.12A of the NER provides for the NMI Standing Data schedule, which appears to allow prospective retailers access to NMI Standing Data through this schedule.⁶
- The ability of retailer authorised service providers to access NMI Standing Data on a retailer's behalf. EA is seeking clarification of the confidentiality requirements under the NER and whether service providers are able to perform functions on retailers' behalf.⁷

² For the purposes of this draft rule determination, we use the term 'retailer service provider' to mean agents or third party service providers who are engaged to undertake certain services (that is, consumer transfers, acquisitions etc) on a retailer's behalf.

³ Connection point is defined as the agreed point of supply agreed, for example, by the retailer and network service provider.

⁴ Definition of "NMI Standing Data", Chapter 10 of the NER.

⁵ Prospective retailers refers to those retailers (who are also registered participants in the NEM) which are seeking to be the retailer for a consumers supply point (that is, not a consumer's financially responsible market participant (FRMP)).

⁶ EnergyAustralia rule change request to the AEMC, EA, 15 November 2012, p.3.

⁷ EnergyAustralia rule change request to the AEMC, EA, 15 November 2012, pp.2-3.

EA's rule change request seeks to address issues raised in an Australian Energy Regulator (AER) compliance bulletin. The AER outlined in that bulletin that it considered retailer service providers are not one of the parties entitled to access or receive NMI Standing Data under either rule 7.7 or clause 3.13.12 of the NER. EA submitted that retailers, and other participants, use service providers to perform certain functions and activities on their behalf. It considered that limiting the access of service providers is impractical and will have implications for retailers' business models. This may lead to inefficient delivery of services to consumers and increased costs for both retailers and consumers.⁸

1.3 Solution proposed in the rule change request

The rule proponent proposes to resolve the issues discussed above by making a rule that:

- amends rule 7.7(a) of the NER to include a new provision which explicitly provides for retailers (and their service providers) to access and receive NMI Standing Data. Access to NMI Standing Data would be for the purpose of conducting relevant retailing activities, including but not limited to:
 - consumer transfers;
 - billing and settlements;
 - consumer acquisitions; and
 - other retailer functions as required.
- introduce a new clause in the NER that explicitly makes retailers responsible for the actions of their service providers.

EA outlined in its rule change proposal that the proposed rule change would:

- clarify the intent of the relevant provisions in the NER. The changes would create certainty for retailers regarding the ongoing nature of their operations, and preserve the ability for customers to choose their retail supplier based on accurate pricing information;
- align the regulatory framework with efficient market practices; and
- remove any additional costs to consumers from retailers having to adapt their processes and system to comply with existing NER provisions.

⁸ EnergyAustralia rule change request to the AEMC, EA, 15 November 2012, pp.2-5.

1.4 Background

1.4.1 Existing provisions for the access and use of NMI Standing Data

What is NMI Standing Data

NMI Standing Data is the information related to a connection point at which supply of electricity for consumption occurs. NMI Standing Data information includes, but is not limited to: applicable network tariff, consumption threshold bands, loss factors, physical location and other data related to the physical properties of the metering installation at the connection point. NMI Standing Data does not contain consumption data from a consumer's metering installation.

Mechanism to access NMI Standing Data

The Australian Energy Market Operator (AEMO), as part of its market functions, is required to establish a system to store and maintain NMI Standing Data, which provides for parties who are entitled to access the data to do so. To fulfil this requirement and other system operation and information requirements under the NER, AEMO established the Market Settlement and Transfer Solution (MSATS) system. The MSATS system includes a number of functionalities and categories of information. This includes:

- The Consumer Administration and Transfer Solution (CATS). This is used to record and update information on connection points used in the settlement of the electricity market. It is also used to handle the transfer of consumers between retailers, and facilitate NMI discovery (which is discussed below).
- Wholesale, Interconnectors, Generator and Sample (WIGS) NMIs. Facilitates consumer transfer, the registration of metering installation and management of Standing Data for NMIs that have been classified as wholesale, interconnector, generator, sample data or external profiles.
- The Metering Data Management System (MDM). This holds and processes metering data recorded from the consumers meter for the purposes of market settlement; and
- The Business to Business (or B2B) System.

Access and use of MSATS is through a dedicated and secure web portal. To access and use MSATS, registered participants are to comply with a number of AEMO procedures,⁹ including those that outline the authorisations and allocation of user

⁹ Clause 3.19(c) of the NER.

identification logins to the system.¹⁰ Access to MSATS is in accordance with obligations in the NER and AEMO's strict password controls.¹¹

Access to NMI Standing Data under the NER

Access to NMI Standing Data is set out under the NER. Rule 7.7(a) of the NER sets out the parties that are entitled to access energy data, or receive metering data, NMI Standing Data, settlements ready data or data from the metering register for a metering installation. Under these NER provisions a number of parties are entitled to access or receive the data. For this rule change request, the following parties are relevant:¹²

- registered participants with a financial interest in the metering installation or the energy measured by that metering installation;
- financially responsible market participants (FRMP) in accordance with the meter churn procedures in the NER;¹³ and
- a consumer, upon request to their retailer, for information relating to that consumers metering installation.

NMI Standing Data is classified as 'confidential information'.¹⁴ This means that registered participants are subject to confidentiality obligations under rule 8.6 of the NER in relation to that information which includes an obligation that participants must not disclose confidential information to any persons except as permitted by the NER and must not permit unauthorised persons to access confidential information.¹⁵

Other relevant information

NMI Standing Data schedule

In accordance with the NER, AEMO is required to develop and publish a National Energy Market (NEM) wide NMI Standing Data schedule for those jurisdictions that have applied the National Energy Retail Law (NERL) as a law of their jurisdiction.¹⁶ The NEM wide NMI Standing Data schedule developed and published by AEMO provides, among other things, that prospective retailers can access the NMI Standing Data for the purposes of providing a retail customer with a quotation or proposal and

¹⁰ Refer to AEMO MSATS Procedures: CATS procedure principles and obligations, July 2012.

¹¹ Australian Energy Regulator, Compliance Bulletin No. 8: Confidentiality requirements for energy, metering and NMI Standing Data, AER, June 2012, p.4; clause 7.2.8 of the NER and AEMO's MSATS procedures.

¹² Other parties entitled (in accordance with the NER) include: authorised metering and metering data providers; network service providers; the Australian Energy Market Operator (AEMO); the Australian Energy Regulator (AER); and the relevant jurisdictional regulators and energy Ombudsman.

¹³ Clause 7.3.4(j) of the NER.

¹⁴ Rule 7.10 of the NER.

¹⁵ Clauses 8.6.1(b)(1) and 8.6.1(b)(3) of the NER. These are civil penalty provisions.

¹⁶ Clause 3.13.12A of the NER.

entering a change of retailer request into the MSATS database.¹⁷ However, the NER itself does not provide that prospective retailers are entitled to NMI Standing Data. The NEM Standing Data schedule replaces certain jurisdictional arrangements relating to NMI Standing Data.¹⁸

NMI discovery

One of the functions provided by MSATS is 'NMI discovery'. NMI discovery refers to the process where a retailer queries MSATS to find a NMI for a consumer (where it is not known or cannot be provided by the consumer). Once a NMI is identified, the prospective retailer is able to obtain the Standing Data.

1.4.2 AER Compliance Bulletin

As noted in the AEMC consultation paper, EA indicated in its proposal that the rule change request was being raised in response to an AER compliance bulletin. This was the compliance bulletin the AER issued in July 2012 relating to the confidentiality requirements under the NER for energy, metering and NMI Standing Data.¹⁹

As part of the compliance bulletin, the AER highlighted a compliance issue about retailers providing their authorised service providers with access to MSATS to retrieve NMI Standing Data.

The issue arose in response to the AER discovering that a market participant (a retailer) had allocated a portion of its MSATS user identification logins to a third party service provider who was engaged to perform consumer acquisition services on behalf of that retailer (that is, authorised retailer agent). The AER noted that this third party service provider (who was not a registered participant in the NEM) then used the login details to research NMI Standing Data.²⁰

The AER considered that the market participant, (by providing that third party service provider with passwords to MSATS, and thereby access to NMI Standing Data) may not be complying with their confidentiality obligations under NER. The AER stated that, the retailer's contracted third party service provider was not one of the persons entitled to access or receive NMI Standing Data under either rule 7.7 or clause 3.13.12 of the NER. The AER also considered AEMO is the only party under rule 7.7 or related clauses which can provide energy data, NMI Standing Data or metering data to its authorised service providers.²¹

¹⁷ AEMO, 2012, www.aemo.com.au/en/Electricity/Retail.../0620-0027.pdf.ashx

¹⁸ Clause 3.13.12 of the NER.

¹⁹ AER, Compliance Bulletin No. 8: Confidentiality requirements for energy, metering and NMI Standing Data, AER, June 2012.

²⁰ AER, 2012, Compliance Bulletin No. 8: Confidentiality requirements for energy, metering and NMI Standing Data, p 9.

²¹ AER, 2012, Compliance Bulletin No. 8: Confidentiality requirements for energy, metering and NMI Standing Data, p.9.

The compliance bulletin indicated that the AER would not take any enforcement action in relation to retailers that have provided, or may be providing, third party service providers (acting on a retailer's behalf to perform consumer acquisition activities) with access to NMI Standing Data. This approach would take effect from 29 June 2012 and be reviewed after 31 December 2013. The AER noted however that it would closely monitor industry behaviours and may use its discretion to take any enforcement action if it considers the disclosure of confidential information has resulted in a significant market impact or breach of privacy.²²

In the compliance bulletin, the AER decision not to take any immediate action was based on a number of factors including:

- AEMO's MSATS introduction guide contemplated the use of MSATS by service providers approved by registered participants. We understand that AEMO are now considering revising the introduction guide and other relevant documents to remove references to third party service providers in response to AER's compliance bulletin.
- Jurisdictional NMI Standing Data schedules (that were developed under clause 3.13.12 of the NER) regarding the requirements on registered participants to use of NMI Standing Data do not contemplate access by authorised service providers of registered participants to this data.
- Allowing sufficient time for industry and policy makers to clarify the requirements of the NER and other energy legislation or, alternatively, for market participants to change their practices.
- Broader policy work occurring at the time of its decision regarding the clarity of rule 7.7(a) of the NER, and the role of third parties in the market to provide energy products and services.

1.4.3 Related reforms

There are some broader reforms occurring which are considering similar issues which this rule change request and submissions have raised. In particular, these relate to the AEMC Power of choice review and recommendations, and SCER smart meter work program to review customer protection arrangements in context of smart meters. These are discussed below.

AEMC Power of Choice review

In November 2012, the AEMC published the final report for the Power of Choice (PoC) review. The review identified the opportunities (information, education, and technology, and flexible pricing options) for consumers to make more informed choices about the way they use electricity. The review also identified the market conditions

²² AER, 2012, Compliance Bulletin No. 8: Confidentiality requirements for energy, metering and NMI Standing Data, p 10.

and incentives needed for network operators, retailers and other parties to maximise the potential of efficient demand side participation (DSP) and respond to consumers' choices. The overall objective of the review was to ensure that the community's demand for electricity services is met by the lowest cost combination of demand and supply side options.²³

The AEMC PoC Final Report put forward a suite of recommendations to the existing NEM arrangements. For the purposes of this rule change request, the recommendations of relevance include:

- Amending rule 7.7(a) of the NER regarding consumer (and their service providers) access to energy information.²⁴ This rule change request also seeks to amend rule 7.7(a);
- Amending the National Energy Customer Framework (NECF)²⁵ to establish a framework governing (non-retailers and regulated network services) who provide energy services and residential and small business consumers. The proposal outlined that the framework should consider what aspects of the NECF would apply to third party energy service providers and in what circumstances.²⁶ This rule change request specifically relates to third party service providers who are under contract to a retailer to perform certain services;
- A review of retailer switching arrangements to better support consumer choice and to make consumers switching retailers more efficient (that is, timing). This rule change request may have implications for consumer switching arrangements and hence access to relevant information.²⁷
- A proposal to introduce a framework in the NER that provides for competition in metering and related services for residential and small business consumers. This would, if agreed, have implications for who is able to have access to relevant consumer energy and metering data under the existing rules.²⁸

Following receipt of the AEMC Power of Choice Final Report, the Standing Council on Energy and Resources (SCER) agreed to progress a number of rule changes proposals. This includes the proposal to revise rule 7.7(a) of the NER.

Other reforms

²³ Australian Energy Market Commission, Power of Choice review - giving consumers options in the way they use electricity, final report, AEMC, 30 November 2012.

²⁴ Australian Energy Market Commission, Power of Choice review - giving consumers options in the way they use electricity, final report, AEMC, 30 November 2012, Chapter 3.

²⁵ The NECF establishes the energy specific protection obligations and arrangements for regulating the sale and supply of electricity and gas to consumers. It includes amongst other things, consumer protection measures relating to marketing, informed consent, security and privacy provisions.

²⁶ AEMC, op.cit, 39-46.

²⁷ AEMC, op.cit, 37-38.

²⁸ AEMC, op.cit, Chapter 4.

We note that there are other reforms, where the work may intersect with some of the issues in this rule change request such as:

- SCER smart meter work program to review customer protection arrangements in context of smart meters. This work covers a range of consumer protection issues and energy services/products provided by a range of parties (including third party energy service providers) related to introduction of smart meter services.²⁹
- An Australian Government scoping study on the need for an energy information hub to improve energy information disclosure. An element of this work is considering how third party service providers can access consumer information and how that data can be efficiently transferred to these and other parties.³⁰

1.5 Commencement of rule making process

On 14 March 2013, the Commission published a notice under section 95 of the National Electricity Law (NEL) advising of its intention to commence the rule making process and the first round of consultation in respect of the rule change request. A consultation paper prepared by AEMC staff identifying specific issues or questions for consultation was also published with the rule change request. Submissions closed on 26 April 2013.

The Commission received fifteen submissions on the rule change request as part of the first round of consultation. They are available on the AEMC website³¹. A summary of the issues raised in submissions and the Commission's response to each issue is contained in Appendix A.

1.6 Extension of time

On 27 June 2013, the Commission decided under section 107 of the NEL to extend the period of time for the making of the draft rule determination to 8 August 2013. The reason for this decision was to allow time for it to consider a number of complex and difficult issues that were raised in submissions.

1.7 Consultation on draft rule determination

In accordance with the notice published under section 99 of the NEL, the Commission invites submissions on this draft rule determination including a draft rule, by 19 September 2013.

In accordance with section 101(1a) of the NEL, any person or body may request that the Commission hold a hearing in relation to the draft Rule determination. Any request

²⁹ SCER Energy Market Reform Working Group, National Smart Meter Consumer Protection and Safety Review, Officials report, November 2012.

³⁰ The Australian Government Department of Energy and Resources, 2012 Scoping study for a consumer energy data access system (CEdata), August 2012.

³¹ www.aemc.gov.au

for a hearing must be made in writing and must be received by the Commission no later than 15 August 2013.

Submissions and requests for a hearing should quote project number “ERC0153” and may be lodged online at www.aemc.gov.au or by mail to:

Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

2 Draft rule determination

2.1 Commission's draft determination

In accordance with section 99 of the NEL the Commission has made this draft rule determination in relation to the rule proposed by EA.

The Commission has determined it should make, with amendments, the rule proposed by the rule proponent (the draft rule).³²

The Commission's reasons for making this draft rule determination are set out in section 3.1.

The draft rule is attached to and published with this draft rule determination. Its key features are described in section 3.2.

Box 2.1:

In this draft rule determination, the following terms have the meaning as indicated:

- access, in relation to entitlement to NMI Standing Data, also under the draft rule, means receipt;
- customer, also means a consumer of electricity as referred to in the NEO and an end user as referred to in the draft rule;
- NMI Standing Data, under the draft rule, being classified as 'confidential information', for information provided to AEMO under either clauses 3.13.12 or 3.13.12A of the NER;
- NMI Standing Data, under the draft rule, being classified as 'confidential information', for information provided to AEMO under either clauses 3.13.12 or 3.13.12A of the NER;
- privacy legislation means the Privacy Act 1988 (Cth) and any State privacy laws that apply to participants in the NEM.
- prospective retailer, as for retailer below, who is a retailer that has a prospective interest in a customer who has a metering installation with a NMI; and
- retailer, a Registered Participant registered by AEMO in the category of 'Customer' in accordance with Chapter 2 of the NER, who also sells electricity to end users in the NEM. An end user includes a prospective end

³² Under section 99(3) of the NEL the draft of the rule to be made need not be the same as the draft of the proposed rule to which the notice under section 95 relates.

user as referred to in section 2(2) of the NEL.

2.2 Commission's considerations

In assessing the rule change request the Commission considered:

- the Commission's powers under the NEL to make the rule;
- the rule change request;
- the fact that there is no relevant Ministerial Council on Energy (MCE) Statement of Policy Principles;³³
- submissions received during the first round of consultation;
- other relevant processes that intersect with the issues considered under this rule change request; and
- the Commission's analysis as to the ways in which the proposed rule will or is likely to, contribute to the National Electricity Objective (NEO).

2.3 Commission's power to make the rule

The Commission is satisfied that the draft rule falls within the subject matter about which the Commission may make rules. The draft rule falls within section 34(1)(a)(iii) of the NEL which relates to: "the activities of persons (including registered participants) participating in the national electricity market or involved in the operation of the national electricity system".

Also, the draft rule relates to Item 35 of Schedule 1 Subject matter for the NER. That item provides that the Commission may make a rule relating to confidential information held by a registered participant and AEMO.

2.4 Rule making test

Under section 88(1) of the NEL the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the NEO. This is the decision making framework that the Commission must apply.

The NEO is set out in section 7 of the NEL as follows:

"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:

³³ Under section 33 of the NEL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule.

- (a) price, quality, safety, reliability and security of supply of electricity;
and
- (b) the reliability, safety and security of the national electricity system.”

For this rule change request, the Commission considers that the relevant aspect of the NEO relates to the efficient operation and investment in electricity services for the long term interests of consumers of electricity with respect to price.³⁴

The Commission is satisfied that the draft rule will, or is likely to, contribute to the achievement of the NEO because:

- It clarifies and establishes the entitlement of retailers to NMI Standing Data for the purposes of consumer transfers and acquisitions. This is achieved by amending the NER to entitle retailers (including prospective retailers) to NMI Standing Data subject to anything that may be required or otherwise necessary under any applicable privacy legislation. Further, it amends the confidentiality obligations of registered participants under NER, so that retailers can disclose NMI Standing Data to their service providers for consumer transfer and acquisition activities.
- By clarifying and establishing this entitlement and obligations, it supports a greater level of certainty and predictability regarding access and use of NMI Standing Data. This reduces the existing uncertainty and risks for retailers to use the information to fulfil market functions either under the NER. The draft rule is likely to facilitate retail competition, reduce barriers to entry and promote the provision of least cost and efficient energy services to consumers.
- Consumers will be provided with accurate information which will allow them to make informed decisions in regards to their electricity supply. This is because prospective retailers (and their service providers) will be in a better position to provide accurate quotes based on information accessed through the NMI Standing Data.
- The draft rule also removes the potential for ambiguity and inconsistency under the NER. This is likely to lead to a greater transparency in market arrangements, which would reduce compliance risks and costs.

Under section 91(8) of the NEL, the Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of AEMO's declared network functions. The draft rule is compatible with AEMO's declared network functions because it is unrelated to them.

³⁴ Under section 88(2), for the purposes of section 88(1) the AEMC may give such weight to any aspect of the NEO as it considers appropriate in all the circumstances, having regard to any relevant MCE Statement of Policy Principles.

3 Commission's reasons

The Commission has analysed the rule change request and assessed the issues arising out of this rule change request. For the reasons set out below, the Commission has determined that a draft rule be made. Its analysis of the proposed rule and the key features of the draft rule are also set out below.

3.1 Assessment of issues

In submitting the rule change request, EA sought to clarify arrangements and obligations under the NER regarding access to NMI Standing Data by retailers and their authorised service providers. Currently prospective retailers and retailers' service providers have been accessing NMI Standing Data through the NMI Standing Data schedule for the purposes of facilitating consumer quoting and transfers. As a result of the AER's compliance bulletin relating to the treatment of confidential information contained in the NMI Standing Data, EA considered that there was ambiguity and potential uncertainty in the NER with regards to retailers and their service providers accessing this data.

In assessing the proposed rule the Commission considered the purpose and use of NMI Standing Data, the current arrangements for accessing this data and the rule proponent's and stakeholders' views on the need to change these current arrangements. The Commission also considered stakeholder concerns about the implications to the treatment of confidential and private information of making a change to the current access arrangements; and retailers' service providers' access to NMI Standing Data.

The Commission considers that the provision of information contained in the NMI Standing Data allows the retail market to function efficiently and it is also necessary for retail competition. This is because, NMI Standing Data is used by retailers to enable customer transfers, billing and settlements. Prospective retailers can also use the information to provide accurate quotes to potential customers.

For retailers to undertake their relevant market functions and provide the appropriate services on behalf of consumers, the Commission considers that there should be transparency and certainty in the conditions that apply for accessing information and the type of information that can be accessed. Clarity of the NER provisions and obligations also ensures that any unnecessary compliance risks and costs to retailers are avoided.

The Commission notes the concerns expressed by stakeholders with regards to consumer protection. NMI Standing Data is classified as 'confidential information' under the NER which means that registered participants are subject to confidentiality obligations when handling and providing access to this information. Separately, NMI Standing Data may contain information that is considered 'personal information' under privacy legislation (for example, the 'address' field with other information may allow for the identity of an individual to be determined). The Commission considers that, to

the extent NMI Standing Data contains personal information; retailers should be subject to any applicable provisions under privacy legislation in accessing and using NMI Standing Data.

With respect to retailers' service providers having access to NMI Standing Data, the Commission notes that it is common industry practice for retailers to use authorised service providers for the delivery of energy services to consumers. In performing these functions, retailers' service providers are acting on behalf of retailers under contract. Under these circumstances, the Commission considers that it is appropriate to authorise retailers to disclose NMI Standing Data to their service providers.

3.2 Key features of the draft rule

The Commission has made a draft rule that takes into consideration the consumer protection concerns raised by stakeholders while allowing retailers (including prospective retailers) and their service providers to access NMI Standing Data. The draft rule differs from the proposed rule as follows:

- it entitles retailers including prospective retailers to access NMI Standing Data;³⁵
- in entitling retailers to NMI Standing Data, the Commission has not excluded any applicable requirements of privacy legislation. Retailers are entitled to access NMI Standing Data only after first doing whatever may be required or otherwise necessary under any applicable privacy legislation; and
- it authorises retailers to disclose NMI Standing Data to service providers of the retailer for the purposes of providing services in connection with the sale of electricity.

A retailer is currently already entitled to NMI Standing Data if the retailer falls within one of the categories of permitted persons set out in rule 7.7(a) of the NER. For example, if a retailer has a financial interest in the customer's metering installation, then the retailer is entitled to NMI Standing Data.

Because NMI Standing Data is 'confidential information' under the NER the retailer is required to comply with the confidentiality obligations set out under rule 8.6 of the NER. These obligations require retailers to:

- keep NMI Standing Data confidential (clause 8.6.2(a));
- only use or reproduce NMI Standing Data for the purpose for which it was disclosed or another purpose contemplated by the NER (clause 8.6.1(b)(2));
- prevent unauthorised access to NMI Standing Data (clause 8.6.1(c)(1));

³⁵ Retailers who are the FRMP already have access to NMI Standing Data under rule 7.7(a) of the NER. For the purposes of this draft rule determination we refer to retailers which includes prospective retailers, to describe retailers as the defined term "retailers" in the NER only applies in jurisdictions that have applied NERL as a law of their jurisdiction.

- ensure that any person to whom it discloses NMI Standing Data observes the confidentiality obligations of rule 8.6 of the NER (clause 8.6.1(c)(2));
- prior to disclosure of NMI Standing Data, inform the proposed recipient of the confidentiality of the information and take appropriate precautions to ensure that the proposed recipient keeps the data confidential (clause 8.6.3);
- not permit unauthorised persons to have access to the data (clause 8.6.1(b)(3)); and
- not disclose NMI Standing Data to any persons except as permitted by the NER (clause 8.6.1(b)(1)).

In making the draft rule, the Commission has not determined that it considers that NMI Standing Data contains ‘personal information’ under privacy legislation. Rather, the Commission considers that the consideration of whether or not NMI Standing Data is ‘personal information’ is a decision the retailer is required to make. In entitling retailers to NMI Standing Data under the draft rule, the Commission has sought to ensure that privacy legislation applies to retailers with respect to NMI Standing Data.³⁶

The draft rule makes the following amendments:

- new rule 7.7(a1) which provides that a retailer is entitled to NMI Standing Data after having first done whatever may be required or otherwise necessary under any applicable privacy legislation;
- amendment to rule 7.10 that clarifies that information provided under a scheme for an NMI standing data schedule as referred to in clause 3.13.12A of the NER is also ‘confidential information’;
- new clause 8.6.2(b1) which provides that retailers may disclose NMI Standing Data to their service providers for the purposes of providing services in connection with the retailer’s sale of electricity to end users; and
- consequential amendment to clause 8.6.3 for new clause 8.6.2(b1) of the NER.

The draft rule also provides for a transitional provision that enables AEMO subject to a final rule being made, to amend its MSATS procedures under a simplified consultation procedure.

The Commission considers that AEMO's MSATS procedures may need to be updated to reflect the final rule if made. This is to ensure that there is consistency between AEMO's procedures and the entitlements to NMI Standing Data under rule 7.7(a) of the NER. It is noted that AEMO can update these procedures at any time by following

³⁶ Under privacy legislation, consent to collection or disclosure of personal information may not be required if a law (such as a rule made under the NEL) authorises such collection or disclosure. The Commission does not consider that the draft rule should override any requirements retailers may have under privacy legislation to obtain such consent for the collection or disclosure of NMI Standing Data.

the rules consultation procedures.³⁷ However, the Commission considers that where AEMO is updating its MSATS procedures to reflect this rule change some consultation on the underlying issue has already occurred. In this case, the full rules consultation procedure would not be necessary. The Commission also notes that should AEMO wish to change any other aspects of the MSATS procedures, it will have to follow the rules consultation procedures.

3.2.1 Benefits

The Commission considers that allowing retailers (including prospective retailers) access to NMI Standing Data will provide certainty to retailers in performing their market functions and providing appropriate services to consumers. Also, allowing retailers to disclose NMI Standing Data to their service providers under the confidentiality provisions of the NER, will enable current business practices of retailers using authorised service providers to continue. By removing uncertainty, the draft rule should allow retailers to avoid compliance risk and associated costs of changing their business model. By encouraging efficient business practices, the draft rule promotes retail competition which benefits consumers by providing them with accurate information to allow them to decide which retail offer best suits them.

The Commission considers that consumers will benefit through clearer consumer protection provisions. This is achieved by making retailer access to NMI Standing Data subject to provisions under the applicable privacy legislation. Also, the consumer benefits from the avoidance of costs to retailers which would ultimately have been passed through to consumers as higher tariffs.

3.2.2 Potential costs

The Commission considers that there would be minimal costs associated with implementing the draft rule. The draft rule requires retailers to comply with the applicable privacy legislation. However, as retailers (and their service providers) should already be complying with the applicable privacy legislation, any additional costs to them resulting from the draft rule should be limited.

The Commission considers that any potential costs are likely to be outweighed by the potential benefits of the rule change.

3.3 Civil penalties

The draft rule does not amend any clauses that are currently classified as civil penalty provisions under the NEL or National Electricity (South Australia) Regulations. The Commission does not propose to recommend to the SCER that the additional clause in the draft rule be classified as a civil penalty provision.

³⁷ Clause 7.2.8(b) of the NER.

4 Commission's assessment approach

This chapter describes the analytical framework that the Commission has applied to assess the rule change request in accordance with the requirements set out in the NEL (and explained in chapter 2). To assess this rule change, the Commission has considered and focussed on the following issues:

- Purpose and use of NMI Standing Data, including the:
 - conditions under which market participants require NMI Standing Data and the minimum information required to fulfil their market functions; and
 - data that can be accessed taking into account AEMO's data management systems.
- Who has access to NMI Standing Data. This includes:
 - those who have access under current provisions, such as:
 - registered participants with a financial interest in the metering installation or the energy measured by that metering installation; and
 - financially responsible market participants (FRMP).
 - those who have access under current practices, such as prospective retailers and retailers' service providers. The efficiency benefits of retailers having access to information to undertake a wide range of services on behalf of consumers and the extent to which the provision of such information promotes the efficient operation of retail markets and facilitates retail competition.
- Confidentiality and privacy issues. This includes:
 - existing arrangements for the treatment of confidential information and personal information, including AEMO's existing procedures;
 - stakeholder concerns with respect to consumer protection;
 - improvements that can be made to protect personal information by making it explicit that retailer access to NMI Standing Data is subject to compliance with requirements under the applicable privacy legislation.
- Retailer service providers accessing NMI Standing Data. This includes:
 - current practices of retailers to use contractors and service providers for the delivery of electricity services to consumers; and

- allowing retailers' service providers to access NMI Standing Data by permitting retailers to disclose confidential information to their service providers.

The Commission has focussed on this set of issues because these issues relate to conditions under which retailers require NMI Standing Data, the efficient operation of retail market and competition, the requirements with respect to the treatment of confidential and personal information and the clarity and transparency of existing NER arrangements.

In addition to the above considerations, the Commission's analysis has also involved consultations with stakeholders and AEMO and reviewing previous policy views of the SCER particularly in relation to the National Energy Customer Framework (NECF).

5 Access to NMI Standing Data

This chapter discusses the purpose and use of NMI Standing Data, who has access to NMI Standing Data and confidentiality and privacy issues that may arise from accessing the standing data. The current arrangements, the proponent's and stakeholders' view and the Commission's analysis and conclusion are set out under each issue.

5.1 Purpose and use of NMI Standing Data

5.1.1 Current arrangements

As discussed in chapter 1, NMI Standing Data as defined in the NER, is information related to a connection point (that is, the point where the supply of electricity for consumption occurs). The NMI Standing Data relates to the physical properties of metering installations and includes, but is not limited to information on: applicable network tariff, consumption threshold bands, loss factors, physical location and other data related to the physical properties of the metering installation at the connection point.

NMI Standing Data is used:

- by retailers for customer acquisition activities, such as to obtain accurate details of the customer's network and metering installation charges;
- by retailers for customer transfers, to verify customer transfer date as the next meter read date or some other date;
- by the Retailer of Last Resort (RoLR), in the event of the current retailer default for transfer to the RoLR.

NMI Standing Data does not contain consumption data from a consumers metering installation. A list of NMI Standing Data items that are returned in a NMI discovery is contained in Appendix B. The NER allows AEMO to add items to the list of NMI Standing Data items that is returned in a NMI discovery.

AEMO's procedures set out how NMI Standing Data information is stored and maintained and how access is provided to parties who are entitled to access it. Further, for those jurisdictions that apply the NERL as a law of their jurisdiction, the NER provides for AEMO to develop and publish a scheme for a NMI Standing Data under clause 3.13.12A. The scheme must include provisions dealing with the rights of persons to access NMI Standing Data. AEMO's published schedule allows for, among other things, registered participants (including prospective retailers)³⁸ to access the NMI

³⁸ Prospective retailers refers to those retailers (who are also registered participants in the NEM) which are seeking to be the retailer for a consumer's supply point (that is, not a consumer's financially responsible market participant (FRMP)).

Standing Data for the purposes of providing a retail customer with a quotation or proposal and entering a change of retailer request into the MSATS database.³⁹ This appears to be inconsistent with the list of persons who are entitled to such access under rule 7.7(a) of the NER.

5.1.2 Rule proponent's view

As outlined in chapter 1, EA highlighted that NMI Standing Data contains information required for retailers to undertake certain market functions in relation to the sale and supply of electricity on behalf of a consumer, including, but not limited to consumer transfers, billing and settlements and consumer acquisitions.⁴⁰

In its proposal, EA indicated that consumers, in order to make appropriate decisions regarding their choice of retailer or product require information regarding their tariffs. Also, retailers require information related to a consumer's NMI in order for them to accurately quote consumers for the supply of electricity. Further, EA noted that in the NEM, relevant information contained in the NMI Standing Data could be accessed by retailers through the NMI Standing Data schedule as a mechanism to facilitate retail competition.⁴¹

5.1.3 Stakeholders' views

Generally stakeholder submissions to the consultation paper recognised that there is certain information that is required for market participants to undertake relevant market functions and related services.⁴²

Retailer submissions noted that information required by retailers to fulfil market functions and comply with responsibilities in relation to the sale and supply of electricity should, at a minimum, include access to NMI Standing Data provided through MSATS. It was noted that NMI Standing Data information is required for:

- classification of customers, based on consumption bands;
- to determine the applicable network tariff to accurately bill customers and engage on potential tariff changes;
- to determine the physical location and other information about metering installation required to engage with consumers on upgrades or change of supplier (that is, when a customer moves out of the premises); and
- undertake consumer transfer processes and back office functions such as network settlement requirements.

³⁹ AEMO, 2012, www.aemo.com.au/en/Electricity/Retail.../0620-0027.pdf.ashx

⁴⁰ EnergyAustralia rule change request to the AEMC, EA, 15 November 2012, p.4.

⁴¹ EnergyAustralia rule change request to the AEMC, EA, 15 November 2012, p.1.

⁴² Issues raised in submissions are summarised in Appendix A.

Retailers considered that NMI Standing Data information is also needed at the consumer acquisition stage to ensure the customer meter is correctly identified and the applicable/accurate tariffs are provided to the consumer.

Overall, retailers considered that NMI Standing Data information is necessary at the acquisition stage and during the life of a consumer contract. This ultimately avoids errors in customer switching and transfers, incorrect quoting of offers, and future billing/contract errors.

Networks NSW submitted that while access to NMI Standing Data information may enable prospective retailers to select customers and areas to target, it excludes metering data and retail tariff information which underpins customer behaviour in switching retail suppliers. Networks NSW considered that a customer's ability to choose its retail supplier is not compromised by a retail price offering and that consumers are free to choose any retail supplier irrespective of the retail offer (irrespective of whether the offer accurately reflects the costs to a retail supplier). It submitted that the shifting of retail price risk from the prospective retailer to the customer does not enhance customer choice or promote competition in the NEM.⁴³

5.1.4 Commission analysis and conclusion

The Commission understands that NMI Standing Data provides necessary information on connection points to the market. The provision of this information allows the retail market to function and is required for retail competition and RoLR. This is because for a retailer (including a prospective retailer) to efficiently perform its market role in relation to the sale and supply of electricity, it requires NMI Standing Data. NMI Standing Data is used by a retailer to enable customer transfers, billing and settlements. Prospective retailers can also use the information to provide accurate quotes to potential customers.

The Commission considers that the provision of accurate information to the consumer at the stage of customer acquisition or transfer enables the consumer to make an informed decision about their choice of retailer supplier. In this regard, the Commission does not agree with Networks NSW that the retail price risk will shift from the prospective retailer to the customer if the proposed rule change is made. Rather, the Commission considers that the customer that will be in a better position to decide which retail offer is best suited to them.

With respect to Networks NSW submission that NMI Standing Data should include information on metering data and retail tariffs, the Commission notes that the NER specifies the type of information that is included in NMI Standing Data. This does not include metering data or other details of the consumer's consumption (such as, retail tariffs).⁴⁴ The Commission does not consider it has been provided with reasons to amend the definition of NMI Standing Data at this time.

⁴³ Networks NSW, submission, 22 April 2013, pp.2-3.

⁴⁴ Definition of "NMI Standing Data", Chapter 10 of the NER.

5.2 Who has access to NMI Standing Data

5.2.1 Current arrangements

Currently, the NER provides for the parties who are entitled to access NMI Standing Data. Rule 7.7(a) of the NER sets out the registered participants that are entitled to access NMI Standing Data; this includes but is not limited to:⁴⁵

- registered participants with a financial interest in the metering installation or the energy measured by that metering installation; and
- financially responsible market participants (FRMP) in accordance with the meter churn procedures in the NER.⁴⁶

Rule 7.7(a) of the NER does not entitle retailers that do not fall into one of these categories above to NMI Standing Data.

Clause 3.13.12A of the NER establishes the NMI Standing Data schedule which applies in those jurisdictions that have applied the NERL as a law of that jurisdiction.⁴⁷ The Commission understands the purpose of this schedule is to authorise registered participants to access NMI Standing Data for the purpose of retail competition. The Commission also understands that the NEM wide NMI Standing Data schedule developed by AEMO under clause 3.13.12A allows for, among other things, prospective retailers to access the NMI Standing Data for the purposes of providing a retail customer with a quotation or proposal and entering a change of retailer request into the MSATS database.⁴⁸ The NEM NMI Standing Data schedule was intended to replace certain jurisdictional arrangements relating to NMI Standing Data provided under clause 3.13.12 which applies in those jurisdictions that have not applied the NERL as a law of that jurisdiction.

In practice, through the MSATS procedures (including the NMI Standing Data schedule under clause 3.13.12A of the NER), the Commission understands that prospective retailers have accessed NMI Standing Data.

5.2.2 Rule proponent's view

As outlined in chapter 1, EA is concerned that, as a consequence of the AER's compliance bulletin, the existing provisions in the NER are ambiguous and may be inconsistent regarding retailers (and their authorised service providers) ability to

⁴⁵ Other parties entitled (in accordance with the NER) include: authorised metering and metering data providers; network service providers; the Australian Energy Market Operator (AEMO); the Australian Energy Regulator (AER); and the relevant jurisdictional regulators and energy Ombudsman.

⁴⁶ Clause 7.3.4(j) of the NER.

⁴⁷ Under this clause, AEMO is required to develop and publish a National Energy Market (NEM) wide NMI Standing Data schedule.

⁴⁸ AEMO, 2012, www.aemo.com.au/en/Electricity/Retail.../0620-0027.pdf.ashx

access NMI Standing Data.⁴⁹ Specifically, EA indicated that there is industry uncertainty regarding:

- prospective retailers⁵⁰ entitlement to access NMI Standing Data; and
- retailer authorised service providers that are undertaking certain activities/services under contract on behalf of a retailer.

With respect to prospective retailers, EA is concerned that the AER's strict interpretation of rule 7.7(a) in its compliance bulletin may imply that there is no basis within the NER for retailers that are not a consumer's FRMP or do not have a financial interest in the metering installation to access NMI Standing Data. Given this, EA considers that there may be inconsistency in the NER between rule 7.7(a) and clause 3.13.12 which needs to be addressed to avoid confusion and any potential compliance risks.⁵¹

Retailer authorised service providers accessing NMI Standing Data is discussed in chapter 6.

5.2.3 Stakeholders' views

Generally stakeholder submissions to the consultation paper were supportive of the need to address any ambiguity that exists within the NER around access to NMI Standing Data.⁵²

Retailer submissions noted that the current wording in the NER is not clear as to whether retailers that do not have a financial interest or are not FRMP at the time of accessing the NMI Standing Data are currently able to access that data under the NER. Retailers considered that the policy intent has always been that retailers with a possible future financial interest in the NMI should be able to, through the NMI discovery process, be able to access the standing data for the purposes of quoting. It was noted that clause 3.13.12 contemplates access through the NMI Standing Data schedule and it was considered that rule 7.7(a) be amended to explicitly allow this use by retailers and avoid unnecessary confusion.⁵³

Simply Energy submitted that if prospective retailers (or their service providers) cannot access NMI Standing Data, then it will severely curtail retail competition. It considered that rule 7.7(a) needs to be amended to accommodate customer acquisition activities.⁵⁴

⁴⁹ EnergyAustralia rule change request to the AEMC, EA, 15 November 2012.

⁵⁰ Prospective retailers refers to those retailers (who are also registered participants in the NEM) which are seeking to be the retailer for a consumer's supply point (that is, not a consumer's financially responsible market participant (FRMP)).

⁵¹ EnergyAustralia rule change request to the AEMC, EA, 15 November 2012, p.3.

⁵² Issues raise in submissions are summarised in Appendix A.

⁵³ Australian Power & Gas, submission, 24 April 2013, p.2.

⁵⁴ Simply Energy, submission, 26 April 2013, p.3.

United Energy suggested that EA's proposed rule 7.7(a)10 be amended to cater for registered participants more broadly than just for retailers. That is, the proposed rule 7.7(a)10 be amended so that registered participants and/or their service providers should be entitled to have access to NMI Standing Data. It submitted that as a matter of principle, a registered participant should be able to deliver the customer network and retail services in a cost effective manner while still ensuring privacy.⁵⁵

As noted above in section 5.2.2, retailer authorised service providers accessing NMI Standing Data is discussed in chapter 6.

5.2.4 Commission analysis and conclusion

As, noted above, the Commission considers that access to certain information is a key condition for facilitating efficient electricity market outcomes. Hence, regulatory frameworks should provide transparency and certainty of the conditions that apply for accessing information and the type of information that can be accessed. This is so that parties are able to undertake their relevant electricity market functions and provide the appropriate services on behalf of consumers. Clarity of the NER provisions and obligations also ensures that any unnecessary compliance risks and costs to parties are avoided.

The Commission notes that the NMI Standing Data is important for registered participants (including prospective retailers) to fulfil their electricity market obligations. For example, it is important for prospective retailers to access NMI Standing Data to facilitate customer transfer and acquisition. The Commission also notes that as a result of full retail competition and concerns relating to barriers to entry, arrangements were put in place so that retailers could access certain information on a consumer's behalf. This included the provision in clause 3.13.12A of the NER in regards to the scheme for a NMI Standing Data schedule.

Given this, the Commission considers that the NER should be amended to clarify the appropriate obligations and improve the transparency and certainty of existing provisions and arrangements.

The Commission's draft rule provides that retailers (including prospective retailers) are entitled to access to NMI Standing Data. The draft rule entitles retailers to NMI Standing Data under new rule 7.7(a1). The Commission considers that the draft rule establishes the rights and obligations of all persons having access to confidential information, including retailers (and prospective retailers) to NMI Standing Data for the purposes of consumer transfers, acquisitions, billing and other retail market functions as required. By clarifying and establishing entitlement of retailers to NMI Standing Data, the Commission considers that the draft rule supports a greater level of certainty and predictability with regards to the entitlement and access to NMI Standing Data. This reduces the existing uncertainty and risks for retailers to use the information to fulfil their electricity market functions under the NER.

⁵⁵ United Energy, submission, 26 April 2013, p.2.

The draft rule also removes the ambiguity and inconsistency in the NER. This is likely to lead to transparent market arrangements and reduced compliance risk and costs.

As a result, the Commission considers that the draft rule is likely to facilitate electricity retail competition, reduce barriers to entry and promote efficient market outcomes which are likely to be in the long term interests of consumers of electricity.

In responding to United Energy's suggested amendment to rule 7.7(a) of the NER in catering for registered participants more broadly, the Commission notes that the rule already allows the following registered participant's access to NMI Standing Data:

- registered participants with a financial interest in the metering installation or the energy measured at that metering installation;
- metering providers who have an agreement to service the metering installation;
- FRMPs in accordance with meter churn procedures;
- network service providers or providers associated with the connection point;
- FRMPs upon request by their customers for information relating to the customers' metering installation; and
- metering data providers who have been engaged to provide metering data services for the customers' metering installation.

The Commission considers the registered participants who require access to NMI Standing Data are already captured by rule 7.7(a).

The draft rule also includes transitional provisions that allow AEMO to amend its MSATS procedures using a simplified consultation procedure.

5.3 Confidentiality and privacy issues

5.3.1 Current arrangements

Under clause 7.10 of the NER, NMI Standing Data is classified as 'confidential information'. Confidentiality provisions under the NER include an obligation that requires registered participants not to disclose confidential information unless otherwise permitted under the NER. These provisions carry civil penalties.⁵⁶

Under the *Privacy Act*⁵⁷ 'personal information' is currently defined as information or opinion (including information or an opinion which is part of a database) about an individual whose identity is apparent, or can reasonably be ascertained, from the

⁵⁶ Clause 8.6.1(b) of the NER.

⁵⁷ *Privacy Act 1988* (Commonwealth)

information or opinion. This is irrespective of whether the information or opinion is true or not, and whether it is recorded in a material form or not.

All registered participants and authorised parties must comply with AEMO's MSATS procedures in order to access NMI Standing Data. Under the MSATS procedures, AEMO currently requires retailers that are seeking to access NMI Standing Data for consumer transfers, quoting and acquisition purposes to obtain informed consent from the consumer.

5.3.2 Rule proponent's view

In its proposal, EA referred to confidentiality and privacy issues in response to the AER's compliance bulletin. EA submitted that these potential issues are mitigated by the fact that any party accessing MSATS data would be bound by privacy and consumer legislation within their commercial agreements. These parties are subject to the requirements set in jurisdictional customer protection framework, Australian Consumer Law (ACL) and potentially the NECF.⁵⁸

5.3.3 Stakeholders' views

The Consumer Action Law Centre (Consumer Action) raised concerns with regards to consumer protection in its submission. Consumer Action submitted that it was concerned that some aspects of energy market reform are proceeding without the consumer protections required to ensure the efficacy of those reforms keeping pace. It also expressed concern that the consumer protections that apply to third parties are not on par with those that apply to registered market participants such as retailers.⁵⁹

Consumer Action recommended that any party accessing information from the NMI Standing Data be subject to the full suite of consumer protections available under energy specific legislation. Specifically, it recommended that the AEMC should proceed with amending the NECF to regulate third parties who provide energy services. Consumer Action submitted that this amendment should proceed before other reforms that enable more information be provided to third parties.⁶⁰

Retailers were generally of the view that additional consumer protections and obligations should not be placed on retailers or their service providers, and that the current consumer protections will adequately protect consumers if the proposed rule change is made. Australian Power & Gas (APG) submitted that retailers have always operated on the basis that as registered participants and licenced entities, retailers are liable for any breaches under the NECF, the NER, the ACL and jurisdictional laws and regulations.

⁵⁸ EnergyAustralia rule change request to the AEMC, EA, 15 November 2012, p.4.

⁵⁹ The Consumer Action Law Centre, Consumer Action, submission, 26 April 2013, p.1.

⁶⁰ The Consumer Action Law Centre, Consumer Action, submission, 26 April 2013, pp.2-3.

Confidentiality issues and concerns that were raised by stakeholders in relation to retailers' service providers are discussed in chapter 6.

5.3.4 Commission analysis and conclusion

The Commission notes the concerns raised by stakeholders with regards to consumer protection. It acknowledges that consumer protections are important to safeguard consumers against the misuse of confidential and private information. In this respect, the Commission notes that NMI Standing Data is classified as 'confidential information' under the NER.⁶¹ This means that registered participants are subject to confidentiality obligations when handling and providing access to this information.⁶² The Commission also notes that AEMO is subject to obligations for the protection of confidential information under provisions in the NEL.

The Commission understands that under current arrangements for accessing NMI Standing Data, AEMO's procedures require retailers to obtain 'explicit informed consent'⁶³ from consumers in order to access NMI Standing Data. The procedures do not specify the form the consent is to take but the Commission understands the consent could take the form of a recorded response from the consumer to a question asked by the retailer.

Some stakeholders were concerned that retailers (and/or their service providers) would use information contained in NMI Standing Data to target consumers.⁶⁴ The Commission has been informed by some retailers that prospective retailers do not use NMI Standing Data to target customers when marketing. Rather they use information such as demographic data at the postcode level to plan their marketing strategies. The Commission notes that MSATS does not retain this type of data.

The Commission also notes that some information contained in NMI Standing Data may be considered as personal information under the privacy legislation. The address field in the NMI Standing Data, while not information 'about an individual', can be used with other information to identify an individual. However, it is likely that a prospective retailer would already have obtained this information from the customer prior to initiating NMI discovery.

The Commission considers that retailers should be subject to privacy legislation in accessing and using NMI Standing Data. Therefore, the draft rule entitles retailers to NMI Standing Data subject to anything that may be required or otherwise necessary under any applicable privacy legislation (including if appropriate making relevant disclosures or obtaining relevant consent(s)). The Commission does not consider it appropriate for specific provisions to be included in the NER that would require retailers to obtain consent from consumers in order to access NMI Standing Data

61 Rule 7.10 of the NER.

62 Clause 8.6.1 of the NER.

63 Explicit informed consent is not defined in the NER, however it is defined in the National Energy Retail Rules.

64 Networks NSW, submission, 22 April 2013, pp.2-3.

provided that retailers are required to comply with any applicable privacy legislation before accessing the data. This is because consumer consent requirements for collection and disclosure of personal information are contained within privacy legislation.

The Commission considers that the benefits of this approach are that:

- to the extent that NMI Standing Data is 'personal information', retailers will be required to comply with privacy legislation;
- there is limited implementation costs on retailers as they should already have processes in place that enables them to comply with privacy laws, the NER's confidentiality obligations and AEMO's consent requirements; and
- if privacy law changes, then the NER provisions would still be relevant.

The draft rule is also consistent with the provisions under which distribution network service providers (DNSPs) treat NMI Standing Data. That is, in providing NMI Standing Data to AEMO under clause 3.13.12(f) of the NER, DNSPs are to ensure that they meet any relevant requirements under privacy legislation.

The draft rule also makes amendment to rule 7.10 of the NER that clarifies that information included under a scheme for an NMI Standing Data schedule as referred to in clause 3.13.12A of the NER, is classified as 'confidential information' under the NER. The Commission considers that this amendment is required for clarity and improving transparency and consistency in the NER with regards to confidential information.

The Commission's consideration on confidentiality concerns with respect to retailers' service providers is discussed in chapter 6.

6 Retailer service providers accessing NMI Standing Data

This chapter discusses retailer service providers accessing NMI Standing Data. It outlines the current arrangements for retailer service providers to access NMI Standing Data, the proponent's and stakeholders' view on formalising these arrangements in the proposed rule change and the Commission's analysis and conclusion. The Commission notes that access to NMI Standing Data by third parties acting on their own behalf or on behalf of consumers will be addressed in a separate rule change arising from the AEMC's Power of Choice review.

6.1 Current arrangements

It is standard practice for businesses to use service providers including contractors and agents. This is the case for retailers and other registered participants, who often use contractors and service providers in the delivery of electricity services to consumers. These commercial arrangements are made on a contractual basis outside the NER and do not affect the responsibility of the retailer to meet its obligations under the NER.

6.2 Rule proponent's view

As outlined in chapters 1 and 5, EA is concerned that the existing provisions in the NER are ambiguous and may be inconsistent regarding retailers' (and their authorised service providers') ability to access NMI Standing Data.⁶⁵ EA indicated that the AER's compliance bulletin has resulted in industry uncertainty in whether retailers' authorised service providers are able to undertake certain activities/services under contract on behalf of a retailer.

EA submitted that it is common industry practice for retailers to engage service providers 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 particularly critical in Victoria where the number of available network tariffs will increase with the introduction of flexible pricing under the Advanced Meter Infrastructure (AMI) program. EA submitted that there will be greater reliance on access to MSATS in order for retailers and their service providers to provide accurate pricing as other jurisdictions move to roll out AMI tariffs.⁶⁶

EA also submitted that it is widespread industry practice for retailers to engage service providers to provide back office functions, which may require access to MSATS. It submitted that it is critical for such retailers to be able to maintain MSATS access for their contracted back office providers for effective operation of their businesses and providing services to their customers.⁶⁷

⁶⁵ EnergyAustralia rule change request to the AEMC, EA, 15 November 2012.

⁶⁶ EnergyAustralia rule change request to the AEMC, EA, 15 November 2012, p.2.

⁶⁷ EnergyAustralia rule change request to the AEMC, EA, 15 November 2012, p.3.

EA noted that until the AER's compliance bulletin it was assumed that the lack of an express provision preventing MSATS access to retailers' service providers, coupled with provisions in AEMO's MSATS introduction guide implied approval for retailers' service providers to access MSATS. It submitted that based on this understanding, the practice of providing MSATS access to service providers under strict compliance undertakings has become common place and underpins the business model of many retailers.⁶⁸

EA further submitted that as its rule change proposal seeks to reinforce the existing industry practice of using authorised service providers, the overwhelming benefit of the proposed rule change comes in the form of avoided costs arising from retailers changing their business models resulting from the AER's interpretation of the NER. It submitted that should the proposed rule change be rejected then this will have a detrimental impact on competition and choice in the market as a result of consumers being unable to access relevant information.⁶⁹

6.3 Stakeholders' views

Retailer submissions to the consultation paper were supportive of the proposed amendments to the NER that will provide clarity and certainty for retailers' service providers accessing NMI Standing Data.⁷⁰ This is particularly where the retailers' business models rely on using authorised service providers for the delivery of efficient energy services to consumers. Retailers submitted that through their contractual arrangements with their authorised service providers they are able to assume the compliance risks associated with any misconduct on the part of the third party. As such, retailers argued because they are liable for any breaches of confidentiality,⁷¹ it will always be in their interests to mitigate to the extent possible those risks through their commercial arrangements with these third parties and to actively monitor the third parties compliance with the retailers' obligations.⁷²

Several stakeholders raised concerns with regards to third party access and consumer protection. The Consumer Action Law Centre (Consumer Action) was particularly concerned that third parties entering the marketplace would not be required to abide by energy consumer protections, such as the NECF. It submitted that without direct obligations to do so, the misuse or misrepresentation of data by third parties may be much more difficult to address. Consumer Action recommended that the AEMC: should consider the practical difficulties associated with ensuring third parties acting on behalf of retailers comply with energy market rules; and before proceeding with

⁶⁸ EnergyAustralia rule change request to the AEMC, EA, 15 November 2012, p.3.

⁶⁹ EnergyAustralia rule change request to the AEMC, EA, 15 November 2012, p.4.

⁷⁰ AGL, submission, 24 April 2013, p.1; Alinta Energy, submission, 26 April 2013, pp.1–2; Australian Power & Gas, submission, 24 April 2013, p.1; Energy Retailers Association of Australia, ERAA, submission, 26 April 2013, p.1; Lumo Energy, submission, 26 April 2013, p.1; Momentum Energy, submission, 26 April 2013, p.1; Origin Energy, submission, 26 April 2013, p.1; Red Energy, submission, 26 April 2013, p.1; and Simply Energy, submission, 26 April 2013, p.1.

⁷¹ Under the NECF, the NER and the Australian Consumer Law.

⁷² Issues raised in submissions are summarised in Appendix A.

this rule change, it should consider amending the NECF so that it governs third parties providing energy services.⁷³

Networks NSW submitted that third parties accessing NMI Standing Data should be appropriately authorised (such as by explicit informed consent of the customer), accredited and registered with AEMO and that sufficient safeguards relating to both confidentiality and privacy are established.⁷⁴

Bid Energy submitted that the AEMC should consider extending the scope of the proposed rule change to include consumer third party service providers. It considers that providing NMI Standing Data access to such parties would simplify existing processes whereby these parties currently source customer data from individual retailers and distributors.⁷⁵

In its submission, United Energy suggested that the exceptions in the NER that apply to the treatment of confidential information by registered participants be extended to cover service providers of the registered participant. This, it considers would avoid doubt and ensure consistency with AEMO's MSATS introduction guideline.⁷⁶

6.4 Commission analysis and conclusion

6.4.1 Actions of service providers

As, noted in chapter 5, the Commission considers that access to certain information is a key condition for facilitating efficient electricity market outcomes. Hence, regulatory frameworks should provide transparency and certainty of the conditions that apply for accessing information and the type of information that can be accessed. This is so that parties are able to undertake their relevant market functions and provide the appropriate services on behalf of consumers. Clarity of the NER provisions and obligations also ensures that any unnecessary compliance risks and costs to parties are avoided.

It is common industry practice for retailers to use authorised service providers for the delivery of electricity services to consumers. In performing these functions, the retailer's service provider is acting on behalf of the retailer under contract to fulfil certain of the retailer's market obligations in the sale and supply of electricity. It is under these circumstances that the retailer's service provider requires access to NMI Standing Data to facilitate customer acquisition, transfer and billing activities.

The Commission is of the view that service providers include agents of the retailer as well as other persons that provide services to the retailer.

⁷³ The Consumer Action Law Centre, Consumer Action, submission, 26 April 2013, p.3.

⁷⁴ Networks NSW, submission, 22 April 2013, p.5.

⁷⁵ Bid Energy, submission, 16 March 2013, p.1.

⁷⁶ United Energy, submission, 26 April 2013, p.3.

6.4.2 Confidentiality provisions

As discussed in chapter 5, information related to NMI Standing Data is classified as confidential information under the NER.⁷⁷ This means that registered participants are subject to confidentiality obligations when handling and providing access to this information.⁷⁸ The Commission notes that the AER considered that market participants by providing their service providers with passwords to MSATS and thereby access to NMI Standing Data may not be complying with their confidentiality obligations under the NER.⁷⁹

The Commission notes that under the current provisions of the NER registered participants are subject to confidentiality obligations when handling and providing access to information that is classified as confidential under the NER.⁸⁰ There are also provisions in the NER that provide exceptions to these confidentiality obligations that allow disclosure of confidential information to third parties.⁸¹ This includes disclosure of confidential information to an employee and advisers (including legal, other professional, auditor and other consultants) of a registered participant.⁸²

The Commission considers that the current exception provisions under clause 8.6.2(b) of the NER, would not allow retailers to disclose NMI Standing Data to their service providers in connection with the sale of electricity. The Commission does not consider that a service provider in providing these services is providing 'advice' to the retailer which is a condition of disclosure under the exemption in clause 8.6.2(b) of the NER.

However, for the reasons discussed above, the Commission considers that it would be appropriate to authorise retailers to disclose NMI Standing Data to service providers. The draft rule sets out a new clause 8.6.2(b1) which adds an exemption to the confidentiality obligations under the NER that allows retailers to disclose NMI Standing Data to their service providers. The draft rule also makes minor amendment to clause 8.6.3 of the NER as a consequence of the amendment to clause 8.6.2(b).

By allowing this exemption for retailer's service providers, the Commission considers that the compliance risk faced by retailers in relation to the AER's compliance bulletin should be removed. It will also mean that retailers will not be required to change their business model in order to comply with the NER, and therefore will avoid any associated costs which would ultimately be passed onto the consumer.

In response to Bid Energy's suggestion that the scope of the rule change should be extended to include consumer third party service providers, the Commission notes that this is matter is subject to the broader energy market reform proposal. The Commission

⁷⁷ Rule 7.10 of the NER.

⁷⁸ Clause 8.6.1 of the NER.

⁷⁹ AER, 2012, Compliance Bulletin No. 8: Confidentiality requirements for energy, metering and NMI Standing Data, p.9.

⁸⁰ Clause 8.6.1 of the NER.

⁸¹ Clause 8.6.2 of the NER.

⁸² Clause 8.6.2(b) of the NER.

notes this issue will be considered through the SCER AEMC PoC review proposed rule change request regarding amendments to the NER for consumer (and their service providers) access to energy and metering (consumption) data⁸³ and the proposed SCER consideration of the NECF to establish a framework governing non-retailers and regulated network services who provide energy services to residential and small business consumers.⁸⁴

⁸³ Australian Energy Market Commission, Power of Choice review - giving consumers options in the way they use electricity, final report, AEMC, 30 November 2012, Chapter 3.

⁸⁴ Australian Energy Market Commission, Power of Choice review - giving consumers options in the way they use electricity, final report, AEMC, 30 November 2012, pp.39-46.

Abbreviations

ACL	Australian Consumer Law
AEMO	Australian Energy Market Operator
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
B2B	Business to Business
CATS	Consumer Administration and Transfer Solution
Commission	See AMEC
DNSP	distribution network service provider
DSP	demand side participation
EA	EnergyAustralia
FRMP	financially responsible market participant
MDM	Metering Data Management System
MSATS	Market Settlement and Transfer Solution
NECF	National Energy Customer Framework
NEL	National Electricity Law
NEM	National Energy Market
NEO	National Electricity Objective
NER	National Electricity Rules
NERL	National Energy Retail Law
NMI	National Metering Identifier
PoC	Power of Choice
RoLR	Retailer of Last Resort
SCER	Standing Council on Energy and Resources

WIGS

Wholesale, Interconnectors, Generator and Sample

A Summary of issues raised in submissions

Stakeholder	Issue	AEMC Response
AGL	<p>AGL supports the rule change proposal. It considered that amendment to the rules will promote clarity and enable retailer service providers to access NMI Standing Data. This is for the purposes of customer acquisition, billing, settlements, and customer transfers. It noted that as part of normal business practices, retailers may engage a range of third party service providers to conduct and complete sales processes.</p> <p>AGL submitted that if access was removed it may have a major impact on retailers' sales process. NMI Standing Data is used to ensure that a retailer can efficient quote a customer with correct rate and correct terms and conditions. It considered that for quoting purposes, at a minimum access to NMI Standing Data and the relevant data elements is required. This is because there is a need to verify customers NMI Standing Data to correctly identify a customer's address and NMI to ensure transfers and consumer is linked to the correct premises.</p> <p>AGL noted that were access to NMI Standing Data was to be removed, there would likely to be an increase in erroneous transfers and misquoting of customers parallel with an increase in customer and ombudsman complaints.</p>	<p>The Commission notes AGL's support for the proposed rule change.</p> <p>The Commission considers that the draft rule will provide clarity in the NER with respect to retailers, their service providers and entitlement and disclosure of NMI Standing Data.</p>
Alinta Energy	<p>Alinta Energy (Alinta) supports the rule change proposal. It supported the need to address any ambiguity that exists within the NER around access to NMI Standing Data.</p> <p>Alinta submitted that it has in place contractual arrangements with a leading energy industry outsourced service provider who provides a number of generally required retail services. It noted that while service providers of retailers are not directly licensed or authorised under regulatory frameworks, their conduct is still subject to the same standards and requirements as prescribed in jurisdictional customer protection regulations, the Australian</p>	<p>The Commission notes Alinta's support for the proposed rule change.</p> <p>The Commission considers that the draft rule will provide clarity in the NER with respect to retailers, their service providers and entitlement and disclosure of NMI Standing Data.</p> <p>The Commission notes Alinta's views on the legal principle of agency that retailers are liable for</p>

Stakeholder	Issue	AEMC Response
	<p>Consumer Law (ACL) and potentially the National Energy Customer Framework (NECF). This requirement is based on the legal principle of agency, which prescribes that a principal will be liable for the actions of its service provider as long as the service provider acts within the scope of the agency agreement.</p> <p>Alinta noted the recommendations of the Power of choice review and considered that the success of a number of customer choice energy efficiency programs hinge on the ability of service providers ability to access consumer data, including NMI Standing Data.</p>	<p>actions undertaken by their service providers.</p> <p>With respect to consumer protection, the Commission considers that the draft rule addresses this issue by making access to NMI Standing Data by retailers subject to the requirements of any applicable privacy legislation.</p>
Australian Power & Gas	<p>Australian Power & Gas (APG) supports the rule change proposal. It considered that the rule change proposal is consistent with the NEO as it will create regulatory certainty for market participants. This is important as the NER informs stakeholders of their rights and compliance obligations and effects the commercial decisions made by market participants. It also submitted that the rule change proposal contributes to the NEO with respect to price by ensuring that retailers are not required to make significant changes to their existing business models to maintain the same level of service provided to consumers at present. Loss of a retailer resulting from financial instability caused by changes to their existing business model, or the imposition of significant costs would have a damaging effect on market competition and electricity prices.</p> <p>APG submitted that for the minimum information required for retailers to fulfil their market responsibilities in relation to sale and supply of electricity, they require access to the data contained in NMI Standing Data and otherwise provided through MSATS. A retailer requires information in relation to the applicable network tariff to accurately bill a customer, and engage with the customer on potential tariff changes. Further, to comply with their obligations on the classification of customers based on consumption bands, retailers are required to have access to this information both at the acquisition stage and during the life of a consumer's contract. Physical location and other information about a metering installation is required for a retailer to engage with a consumer on upgrades to an installation (through the distributor) or a change of</p>	<p>The Commission notes APG's support for the proposed rule change.</p> <p>The Commission considers that the draft rule will provide clarity in the NER with respect to retailers, their service providers and entitlement and disclosure of NMI Standing Data.</p> <p>The Commission notes APG's views on the legal principle of agency that retailers are liable for actions undertaken by their service providers.</p> <p>With respect to consumer protection, the Commission considers that the draft rule addresses this issue by making access to NMI Standing Data by retailers subject to the requirements of any applicable privacy legislation.</p>

Stakeholder	Issue	AEMC Response
	<p>supplier. Other uses of this information include transfer and network settlement processes.</p> <p>APG submitted that in undertaking consumer acquisitions, retailers access NMI Standing Data to ensure that the customer meter is correctly identified and to avoid errors of transfer, incorrect quoting of offers and errors in future billing.</p> <p>APG considered that the current wording in the NER is ambiguous and should be clarified to more accurately reflect what retailers consider is the policy intent of rule 7.7(a). It believes that the policy intent is that retailers with a possible future financial interest in the NMI should be able to, through the NMI discovery process, access the NMI Standing Data for the purposes of quoting. This is a clear reference to clause 3.13.12 which contemplates access through the NMI Standing Data schedule.</p> <p>With respect to consumer protection, APG submitted that third party providers are independently required under privacy laws and confidentiality agreements with their respective retailers to maintain the confidentiality of customer data, including MNI Standing Data. It noted that retailers are liable for any breaches under the NECF, the NER, the (ACL) and jurisdictional laws and regulations. It submitted that retailers assume compliance risk and liabilities that may eventuate through improper actions by contracted third party service providers.</p> <p>APG considered that the AER's compliance bulletin highlighted that there are possible contrary interpretations of the rules and accordingly the NER should be amended to create certainty.</p>	
Bid Energy	<p>Bid Energy does not support the rule change proposal. Bid Energy considered that the proposed rule change be extended to include any customer appointed service provider and not be solely directed to providing access to retailers' service providers. In addition it considered that any such access must have the explicit informed consent of the customer.</p> <p>Bid Energy noted that the same information that is required by retailers is also</p>	<p>The Commission notes the issues raised by Bid Energy. The issue of consumer authorised service providers and access to data will be considered under the SCER Power of Choice review rule change request and the proposed SCER consideration of the NECF to establish a framework governing non-retailers and regulated</p>

Stakeholder	Issue	AEMC Response
	<p>required by consumer service providers for them to be able to source accurate contract offers from retailers. It highlighted the responses it has had from industry participants in order to illustrate how difficult it is to obtain information on customer data.</p> <p>Bid Energy considered that customer service providers should be provided access to NMI Standing Data in order to simplify and standardise data collection on behalf of consumers. It submitted that the proposed rule change should be amended to support customer or customer appointed third party access to MSATS creating a standard process for all interested parties rather than a special process for some retailers.</p>	<p>network services who provide energy services to residential and small business consumers.</p> <p>With respect to consumer protection, the Commission considers that the draft rule addresses this issue by making access to NMI Standing Data by retailers subject to the requirements of any applicable privacy legislation.</p>
Consumer Action Law Centre	<p>The Consumer Action Law Centre (Consumer Action) does not support the rule change proposal. Consumer Action was concerned that some aspects of energy market reform are proceeding without the consumer protections required to ensure the efficacy of those reforms. It considered that the consumer protections that apply to third parties are not on a par with those that apply to registered market participants such as retailers.</p> <p>Consumer Action submitted that it is essential it is made clear what role retailer service providers will play in the market, what reason they or the non-financially responsible retailer will need this information (or any other information) to fulfil their function and that it is in long-term interests of consumers.</p> <p>Consumer Action noted that under the National Energy Retail Law and the Energy Retail Code in Victoria, any service provider operating on the retailer's behalf must abide by the regulations and that ultimately the retailer is responsible for the relationship with the customer. Despite this, Consumer Action was concerned 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 (that is, as evidenced by door-to-door marketing).</p> <p>It recommended that any party accessing data from the NMI be subject to the full suite of consumer protections available under energy specific legislation.</p>	<p>The Commission notes the concerns raised by Consumer Action with respect to consumer protection. The Commission considers that the draft rule addresses these concerns by making access to NMI Standing Data subject to the requirements of any applicable privacy legislation.</p> <p>With respect to Consumer Action's recommendation of the AEMC amending the NECF, the Commission considers that this is beyond the scope of this rule change. The Commission notes that the proposed SCER consideration of the NECF is aimed at establishing a framework that governs non-retailers and regulated network services who provide energy services to residential and small business consumers.</p>

Stakeholder	Issue	AEMC Response
	That is, the AEMC should proceed with amending the NECF so that it governs third parties providing energy services before proceeding with this rule change.	
EnergyAustralia	<p>EnergyAustralia (EA) made a submission in support of its rule change proposal. EA submitted that 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 consumers. It considered that prior to the AER's compliance bulletin, the relationships that had developed under the rules were evidence that this balance had been appropriately struck. EA also considered that if the processes that underpin these arrangements are prohibited, then the costs resulting from the requirement of retailers to in-source all sales activities or find alternative solutions will be passed on to the consumer.</p> <p>EA submitted that retailers use NMI Standing Data at various stages of the customer life cycle. EA noted that initially a retailer (or their 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. EA submitted that 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.</p> <p>With regards retailer service providers, EA submitted that there is range of activities that retailers outsource to service providers. It considered that any alternative mechanism to allow retailer service providers access to NMI Standing Data would essentially equate to retailers having to replicate the relevant aspect of MSATS which would be of considerable cost to industry.</p> <p>EA noted that the concept of agent and principle is widely recognised across many markets and institutions, not just the energy industry. It submitted that</p>	<p>The Commission notes the comments made by EA.</p> <p>The Commission considers that the draft rule will provide clarity in the NER with respect to retailers, their service providers and entitlement and disclosure of NMI Standing Data. It also considers that the draft rule will provide certainty to retailers and should allow retailers to avoid compliance risk and associated costs of changing their business model.</p> <p>The Commission notes EA's views on the legal principle of agency that retailers are liable for actions undertaken by their service providers.</p>

Stakeholder	Issue	AEMC Response
	<p>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 agent for poor or non-compliant performance. Given existing arrangements and protections, EA does not consider that retailer agents should face additional obligations.</p> <p>EA also submitted that retailers bear the risk of enforcement action if their service providers are found to be acting improperly. In contracting with agents to undertake activities requiring access to NMI Standing Data, EA considered that it was liable for any compliance breaches by its service provider.</p> <p>EA also considered that 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.</p>	
Energy Retailers Association of Australia	<p>Energy Retailers Association of Australia (ERAA) supports the rule change proposal. ERAA submitted that proposed rule will provide clarity on access to NMI Standing Data and allow industry and consumers to continue to benefit from the efficiencies of current practices.</p> <p>ERAA submitted that it does not consider that the AER's interpretation of rule 7.7(a) of the NER is consistent with the intent of the rules. It supports the interpretation of its members that third parties are able to access NMI Standing Data if they are a service provider of a registered participant.</p> <p>ERAA noted that retailers as registered participants are liable for breaches under the NECF or jurisdictional consumer protection schemes, whereas third parties are not. It submitted that when contracting with service providers, retailers assume the compliance risk and potential liabilities through commercial arrangements. This, ERAA submitted, provides a strong incentive</p>	<p>The Commission notes the ERAA's support for the proposed rule change.</p> <p>The Commission considers that the draft rule will provide clarity in the NER with respect to retailers, their service providers and entitlement and disclosure of NMI Standing Data.</p> <p>The Commission notes ERAA's views on the legal principle of agency that retailers are liable for actions undertaken by their service providers.</p>

Stakeholder	Issue	AEMC Response
	for retailers to ensure that their service providers are compliant.	
Lumo Energy	<p>Lumo Energy (Lumo) supports the rule change proposal. Lumo submitted that it supports a mechanism which allows service providers of a retailer to access NMI Standing Data where the appropriate contractual arrangements exist to ensure compliance.</p> <p>Lumo submitted that the key purpose of the NMI Standing Data is to confirm active metering configurations and network tariffs. This ensures that retailer's pricing offers to consumers are directly correlated to the consumer's metering configuration and network tariff. It also reduces the rate of transfer and ongoing billing errors when entering customer's details into the retailer's customer management system. Lumo submitted that NMI Standing Data ensures data validation and allows for robust quality assurance.</p> <p>Lumo considered that the existing provisions in the NER are ambiguous with regards to retailers accessing NMI Standing Data for the purposes of providing accurate quotes to consumers. It noted that the majority of retailer's general business practice is to utilise the NMI Standing Data to adequately perform the functions of a retailer. It considered that the proposed rule will remove this existing ambiguity.</p> <p>Lumo also considered that the existing regulatory regime is clear in that a service provider of a retailer is deemed to be a representative of the retailer and that the retailer by extension is unable to limit their liability.</p>	<p>The Commission notes Lumo's support for the proposed rule change.</p> <p>The Commission considers that the draft rule will provide clarity in the NER with respect to retailers, their service providers and entitlement and disclosure of NMI Standing Data.</p> <p>The Commission notes Lumo's views on the legal principle of agency that retailers are liable for actions undertaken by their service providers.</p>
Momentum Energy	<p>Momentum Energy (Momentum) supports the rule change proposal. Momentum submitted while it does not consider the AER's interpretation of rule 7.7(a) of the NER is consistent with the intent of the rules, it nevertheless believes the proposed rule change will remove any ambiguity.</p> <p>With regards retailer service providers, Momentum considers that it is incumbent on retailers to assure themselves that their service providers are complying with the rules and are liable for any breaches under the NECF or</p>	<p>The Commission notes Momentum's support for the proposed rule change. The Commission considers that the draft rule will provide clarity in the NER with respect to retailers, their service providers and entitlement and disclosure of NMI Standing Data.</p> <p>The Commission notes Momentum's views on</p>

Stakeholder	Issue	AEMC Response
	jurisdictional consumer protection schemes committed by their service providers.	the legal principle of agency that retailers are liable for actions undertaken by their service providers.
Networks NSW	<p>Networks NSW does not support the rule change proposal.</p> <p>Networks NSW does not consider that rule 7.7(a) and clause 3.13.12 of the NER are ambiguous with respect to the ability of retailers accessing NMI Standing Data for the purposes of providing accurate quotes to consumers.</p> <p>Networks NSW is concerned that the access and use of NMI Standing Data by unauthorised persons is likely to result in the trawling of consumers personal information. It submitted that while access to NMI Standing Data may enable prospective retailers to select customers and areas to target, it excludes metering data and retail tariff information which underpins customer behaviour in switching retail suppliers. Networks NSW considered that a customer's ability to choose its retail supplier is not compromised by a retail price offering and that consumers are free to choose any retail supplier irrespective of the retail offer (irrespective of whether the offer accurately reflects the costs to a retail supplier). It submitted that the shifting of retail price risk from the prospective retailer to the customer does not enhance customer choice or promote competition in the NEM.</p> <p>Networks NSW submitted that should the NER be amended to provide for third parties accessing NMI Standing Data, then these parties should be appropriately authorised (such as by explicit informed consent of the customer), accredited and registered with AEMO and that sufficient safeguards relating to both confidentiality and privacy are established.</p>	<p>The Commission notes the comments made by Networks NSW.</p> <p>The Commission considers that the draft rule will provide clarity in the NER with respect to retailers, their service providers and entitlement and disclosure of NMI Standing Data.</p> <p>The Commission notes that metering data or other details of the consumer's consumption (such as, retail tariffs) is not included in NMI Standing Data as specified under the NER.</p> <p>The Commission does not agree with Networks NSW that the retail price risk will shift from the prospective retailer to the customer if the proposed rule change is made. Rather, the Commission considers that the customer will be in a better position to decide which retail offer is best suited to them.</p> <p>With respect to consumer protection, the Commission considers that the draft rule addresses this issue by making access to NMI Standing Data by retailers subject to the requirements of any applicable privacy legislation.</p>
Origin Energy	Origin Energy (Origin) supports the rule change proposal. Origin submitted that the current NER provisions might be considered ambiguous given the AER's	The Commission notes Origin's support for the

Stakeholder	Issue	AEMC Response
	<p>interpretation of the rules. It considers that the proposed rule change addresses this ambiguity. It also considers that the proposed rule change provides continued support for the existing retailer/service provider arrangements where the service provider is acting on behalf of the retailer.</p> <p>Origin also submitted that it agreed with the view that third parties acting on behalf of retailers are subject to significantly more stringent requirements with respect to privacy and data security than any third party acting independently. It does not consider that additional consumer protections and obligations should be placed on retailers or their service providers where these service providers are undertaking consumer acquisition activities on behalf of retailers. It noted that retailer service providers are already required to support consumer protection obligations when acting on behalf of retailers.</p>	<p>proposed rule change.</p> <p>The Commission considers that the draft rule will provide clarity in the NER with respect to retailers, their service providers and entitlement and disclosure of NMI Standing Data.</p> <p>With respect to consumer protection, the Commission considers that the draft rule addresses this issue by making access to NMI Standing Data by retailers subject to the requirements of any applicable privacy legislation.</p>
Red Energy	<p>Red Energy supports the rule change proposal. Red Energy submitted that the proposed rule change will provide clarity on the issue of access to NMI Standing Data and it will allow industry and consumers to continue to benefit from the efficiencies of current practices.</p> <p>Red Energy submitted that it supports retailers' service providers being able to access NMI Standing Data. It understands that this is common practice amongst retailers and that it is supported in principle where the action of the service provider is deemed to have been undertaken by the retailer.</p> <p>Red Energy also submitted that access to NMI Standing Data allows retailers and their service providers to provide accurate pricing information to prospective or new customers. It also allows retailers to efficiently and effectively manage customer data. It considered that removing these efficiencies would result in increased costs being passed on to consumers.</p> <p>Red Energy noted that retailers as registered participants are liable for breaches under the NECF or jurisdictional consumer protection schemes, whereas third parties are not. It submitted that when contracting with service providers, retailers assume the compliance risk and potential liabilities through</p>	<p>The Commission notes Red Energy's support for the proposed rule change.</p> <p>The Commission considers that the draft rule will provide clarity in the NER with respect to retailers, their service providers and entitlement and disclosure of NMI Standing Data.</p> <p>The Commission notes Red Energy's views on the legal principle of agency that retailers are liable for actions undertaken by their service providers.</p>

Stakeholder	Issue	AEMC Response
	commercial arrangements. It also submitted that retailers have commercial and legal incentives to ensure that the rules are observed.	
Serviceworks	Serviceworks supports the rule change proposal. It supports the need to address the ambiguity that exists within the NER around access to NMI Standing Data. Serviceworks considers that the proposed rule change will ensure the continuation of benefits and efficiencies are maintained with existing retailer business practices, while also ensuring ongoing compliance with confidentiality obligations.	The Commission notes Serviceworks' support for the proposed rule change. The Commission considers that the draft rule will provide clarity in the NER with respect to retailers, their service providers and entitlement and disclosure of NMI Standing Data.
Simply Energy	<p>Simply Energy supports the rule change proposal. It submitted that failure to implement the proposed rule change will have a dramatic impact on how it conducts its business. Simply Energy submitted that it would have to bring in all of the functions that are currently outsourced which would significantly increase its costs and reducing its retail competitiveness. It considered that this outcome would not be in the long term interests of consumers.</p> <p>Simply Energy noted that retailers require access to the NMI Standing Data to be able to undertake their market functions. It submitted that NMI Standing Data was formulated so that it provided the data that distributors and retailers needed to undertake their responsibilities.</p> <p>Simply Energy submitted that to win a customer from another retailer, a retailer (or its service provider) 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.</p> <p>Simply Energy does not consider there is a need for additional consumer protections. It submitted that it confuses retailer contractual arrangements with their agents and blurs the accountability for meeting the obligations imposed by regulation. If both parties are subject to requirements under regulation it could become difficult to determine who is at fault should an incident occur, and thus</p>	<p>The Commission notes Simply Energy's support for the proposed rule change.</p> <p>The Commission considers that the draft rule will provide clarity in the NER with respect to retailers, their service providers and entitlement and disclosure of NMI Standing Data.</p> <p>The Commission notes Simply Energy's views on the legal principle of agency that retailers are liable for actions undertaken by their service providers.</p>

Stakeholder	Issue	AEMC Response
	<p>who should be held accountable. There is clear and unambiguous accountability for compliance where retailers are solely responsible for the obligations under national regulation.</p>	
<p>United Energy</p>	<p>United Energy supports the rule change proposal. However, United Energy considered that the proposed rule be amended to cater for registered participants more broadly than just for retailers. That is, the proposed rule 7.7(a)10 be amended so that registered participants and/or their service providers should be entitled to have access to NMI Standing Data. It submitted that as a matter of principle, a registered participant should be able to deliver the customer network and retail services in a cost effective manner while still ensuring privacy.</p> <p>United Energy also suggested that the exceptions in the NER that apply to the treatment of confidential information by registered participants be extended to cover service providers of the registered participant. This, it considers would avoid doubt and ensure consistency with AEMO's MSATS introduction guideline.</p>	<p>The Commission notes United Energy's suggested amendments to the proposed rule. The Commission considers that there is no need to make amendments that cater for registered participants more broadly than just for retailers. This is because registered participants who require access to NMI Standing Data are already captured by rule 7.7(a) of the NER.</p> <p>The Commission notes that the draft rule amends the confidentiality obligations of the NER, by adding an exception that provides for retailers to disclose NMI Standing Data to their service providers.</p>

B List of NMI standing data items returned in a NMI discovery

Extracted from AEMO's 'CATS Procedure Principles and Obligations V3.7 Final Determination

Figure B.1

Table 44-C – Common NMI standing data items returned to a FRMP or LNSP in all Jurisdictions for a stage 2 search / request

MSATS Name	Description of data items returned on a successful data access request
NMI	a 10 digit national metering identifier.
TNI Code	a 4 character code representing the transmission node identifier.
DLF Code	a 4 character code representing the distribution loss factor.
NMI Classification Code	refer to clause 4.9.
Embedded Network Parent	a 10 character code representing the name of the parent for any associated embedded network.
Embedded Network Child	a 10 character code representing the name of the child for any associated embedded network.
Meter Serial Number	the meter serial number of the meter associated with the next scheduled read date and network tariff code details provided (see items below).
Next Scheduled Read Date	the next scheduled read date in date format.
Register ID	the register id of the register that the network tariff code and network tariff code additional information refers to.
Network Tariff Code	a 10 character code representing the network tariff.
Network Tariff Code Additional Information	Additional text to supplement the network tariff code if this is a complex network tariff code.
Feeder Class	A15 character long field in varchar format for logical grouping of NMIs based on the DNSPs distribution feeder.
Customer Classification Code	A code that defines the consumer class as defined in the National Energy Retail Regulations, or in over-riding jurisdictional instruments.
Customer Threshold Code	A code that defines the consumption threshold as defined in the National Energy Retail Regulations, or in over-riding jurisdictional instruments.
LNSP	an 8 character code representing the identity of the Local Network Service Provider.
MDP	an 8 character code representing the identity of the Metering Data Provider (Category D).
MPB	an 8 character code representing the identity of the Metering Provider (Category B).

MSATS Name	Description of data items returned on a successful data access request
MPC	an 8 character code representing the identity of the Metering Data Provider (Category C).
Address	This includes all address fields, which comprise DPID, flat number, flat type, floor number, floor type, house number, house number suffix, location description, lot number, street name, street suffix, street type, unstructured address1, unstructured address2, unstructured address3, postcode, locality, and state.
Jurisdiction	A 3 character code that identifies the jurisdiction in which the NMI is located.
NMI Status Code	refer to clause 4.11
Suffix	a 2 character code representing the NMI datastream.
Profile Name	a 10 character code representing the name of the profile
Metering Installation Code	refer to clause 4.12.
Average Daily Load	NUMBER (10). The electrical energy delivered through a connection point or metering point over an extended period normalised to a "per day" basis (kWh).
Meter Status	A single character code to denote the status of the meter within the NEM.
Register Status	A single character lookup code to indicate if register is active.
Stream Status Code	Code used to indicate the status of the suffix. This value must correspond to a valid Stream Status Code in the MSATS_Codes_Values_table.
Datastream Type	Indicates the type of data that the datastream will report includes interval and basic. This value must be 'I' (interval), 'C' (basic) or 'P' (profile).
Unit of Measure	VARCHAR2(5) Code to identify the Unit of Measure (UOM) for data held in this register.
Time Of Day	VARCHAR2(10) Industry developed Codes to identify the time validity of register contents.
Multiplier	NUMBER (13,5) Multiplier required to take a register value and turn it into a value representing billable energy.
Dial Format	NUMBER (4,2) Describes the register display format. First number is the number of digits to the left of the decimal place, and the second number is the number of digits to the right of the decimal place.
Controlled Load	Indicates whether the energy recorded by this register is created under a controlled load regime. Controlled Load field will have "No" if register does not relate to a controlled load, it should contain a description of the controlled load regime.
ActCumInd (Actual/Cumulative Indicator)	Actual/Subtractive Indicator. Actual implies volume of energy actually metered between two dates. Cumulative indicates two meter readings are required to determine the consumption between those two read dates. For an interval meter, ActCumInd is normally = A.
MeterRead Type	Code indicating how the meter is read. Refer to 'Standing data for MSATS' document for further details.