

# **National Electricity Amendment Bill – Smart Meters**

**MCE Standing Committee of Officials Final Policy  
Response  
January 2011**

## Introduction

The Ministerial Council on Energy (MCE) Standing Committee of Officials (SCO) has approved for release this final response to submissions on the second exposure draft of the *National Electricity (South Australia) (Smart Meters) Amendment Bill 2009* (the Bill) and the supporting initial Rule, and the associated initial SCO response to submissions on the first exposure draft.

The Bill was first released for consultation for six weeks in December 2008. SCO received written submissions on the first exposure draft, and held a stakeholder forum in February 2009. In response to submissions SCO further developed the Bill and released it for consultation along with the supporting initial Rule and associated SCO response in June 2009. Submissions were received and a stakeholder forum was held in July 2009. This feedback was provided to Ministers when making decisions on the final form of the amendments, and key policy decisions were explained in the second reading speech that accompanied the Bill.

The Bill was tabled in South Australian parliament and passed in October 2009. The initial Rule has been approved by MCE and made by the South Australian Minister for Energy. The Rule came into effect on 1 January 2011 as Part ZF of Chapter 11 of the National Electricity Rules, and is available from the Australian Energy Market Commission (AEMC) website. As with other rules, the AEMC will be responsible for subsequent amendments using its transparent rule change processes.

This document records SCO's final response to submissions on the second exposure draft of the Bill and its associated material, as well as issues raised that are beyond the scope of the Bill and initial Rule.

The *National Electricity (South Australia) (Smart Meters) Amendment Act 2009* (the Act) provides a head of power for state and territory energy ministers to require distribution businesses to conduct pilots of smart meters and related technology, including of direct load control, or to require distribution businesses to roll out smart meters. The Act supports the Council of Australian Governments' (COAG) commitment to a staged national mandated roll-out of electricity smart meters to areas where benefits outweigh costs. It also supports MCE's decision in June 2008 that "the underlying regulatory arrangements for National Energy Market jurisdictions will remain within a consistent national framework".

The initial Rule implements the decision made by MCE in June 2008 that distributors should be exclusively responsible for meter provision and meter data services for the period of a mandated roll-out in a jurisdiction.

Neither the Act nor the initial Rule have any effect other than where a Minister of a particular jurisdiction makes a decision to issue a determination under the Act, and neither is intended to preclude market participants deploying smart meters in the absence of a Ministerial determination where appropriate.

## Background

In April 2007, COAG endorsed a staged approach for a national mandated roll-out of electricity smart meters, to areas where benefits outweigh costs. The MCE was tasked with investigating costs and benefits of smart meters nationally and jurisdictionally.

In December 2007, the MCE reviewed the first stage of a smart meter cost-benefit analysis (CBA) and subsequently agreed to a national minimum functionality for smart meters. In June 2008, the MCE reviewed the second stage of the CBA and noted a wide range of potential net benefits, but that benefits and costs were not certain in all jurisdictions. On this basis, the MCE supported the development of a national smart metering framework and smart meter deployments in Victoria and New South Wales.

In June 2008 the MCE agreed to extensive pilots and business cases in most jurisdictions to confirm benefits, costs and risks. The MCE also agreed to consider further deployment timelines and any requirement for further analysis by June 2012, based on the findings of the pilots and roll-outs at that time.

The MCE also noted the formation of the National Stakeholder Steering Committee (NSSC), which is made up of consumer and electricity industry representatives, and involved in the development of the technical and operational aspects of the smart metering framework. The NSSC was also expected to build on the results of the national CBA, to further inform costs and benefits. In December 2010 the MCE noted that the NSSC has completed the bulk of its terms of reference and is expected to finalise major items and wind up by June 2011. Broader issues identified by the NSSC will be taken up by the MCE, AEMC and Australian Energy Market Operator (AEMO) work streams which, with the NSSC's deliverables and outputs of the review of consumer protection in light of smart metering, will complete the national framework for smart metering.

Regulatory arrangements for cost recovery, customer protection measures and safety standards for smart metering are being assessed by the MCE as part of the national framework in consultation with stakeholders. The National Electricity Law (NEL) amendments in the Act are the first stage of the national legislative framework.

## **Response to issues raised**

The response is in two sections. The first section details the changes made to the Bill from the second exposure draft and clarifies the intent of the provisions where appropriate, and the second section details the issues raised that are beyond the scope of the NEL amendments and initial Rule.

### ***Changes and clarification on the NEL amendments***

In submissions stakeholders identified areas where further clarity was needed and where they thought the amendments could be improved, including the timing of the NEL amendments and initial Rule, confidentiality, overriding contracts, consultation and a review date for the amendments.

#### **1. Timing – amendments and initial Rule**

A number of stakeholders suggested that the roll-out provisions were premature and presented risks to the development of an effective smart meter framework. They similarly proposed that the aspects of the amendments related to roll-outs and the initial Rule be deferred until the NSSC has provided its advice.

There were also concerns raised about some definitions and terminology used in the Bill, particularly the definition of required smart metering infrastructure, with the NSSC submission providing a list of drafting issues that should be addressed.

SCO considered that it was appropriate to provide the head of power for smart meter mandates in one set of amendments, comprising both pilot and roll-out provisions. Many of the underlying definitions and requirements for pilots and trials are the same for the mandated roll-out of smart meters and as such it was appropriate that they were tabled together. They also provide the necessary structure for the development of the supporting instruments.

The initial Rule supports the NEL amendments and as such it is appropriate that it is made at this time. The initial Rule implements the decision made by the MCE in June 2008 that distributors should be exclusively responsible for meter provision and meter data services for the period of the mandated roll-out. It is not intended to pre-empt decisions about what should happen after the roll-out or who should be responsible for other services enabled by smart meters. The Rule is only intended to apply for the period of the mandated roll-out, and as such it is appropriate that it appears as a transitional rule. This will also maintain the integrity of Chapter 7 of the National Electricity Rules (NER) which otherwise defines who is the responsible person for meter provision and meter data services.

The concerns about specific terminology and definitions highlighted by the NSSC have been addressed and the NEL amendments were changed to reflect the legal intent without confining the development of the Rules, with a majority of the drafting suggestions accepted. To ensure that a Ministerial determination is consistent with the Rules, subsection 118D(3) was included in the Act, specifying that a Ministerial smart meter roll-out determination must be consistent with the Rules.

The initial Rule overlaps with the recent AEMC rule change covering the “Provision of Metering Data Services and Clarification of Existing Metrology Requirements”. Consequential changes to the initial Rule were agreed by the Commission as part of that decision and will come into effect on 20 January 2011.

## **2. Confidentiality**

To address the concerns of stakeholders that the public release of information may be a disincentive to participate in pilots and trials, subsections 118B (6) and (7) have been included in the NEL. These require that information be provided in a manner that does not identify the persons to whom the information relates, unless permission has been given or the information is already public. The second reading speech expanded on the importance of information sharing from pilots and trials.<sup>1</sup>

## **3. Overriding contracts**

SCO acknowledges stakeholder concerns that a Ministerial determination could impact existing contracts, but rejected the proposition that the NEL should provide statutory protection for any breach of contract compelled by a Ministerial determination. SCO believes that the risk of loss on existing contracts is best managed by the businesses involved. As noted in the response to submissions on the first exposure draft, SCO's intention is to make clear that a distributor must comply with the determination, regardless of contractual obligations. The second reading speech noted this was the intent of the provision.

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<sup>1</sup> South Australia, Parliamentary Debates, House of Assembly Inserted into Hansard 09 September 2009, Page 3760, [http://hansard.parliament.sa.gov.au/pages/loaddoc.aspx?aa=1&dt=2009\\_09\\_09](http://hansard.parliament.sa.gov.au/pages/loaddoc.aspx?aa=1&dt=2009_09_09)

This is no different to any other change in regulatory requirements that a business must comply with, regardless of existing contracts, and as such the business should be able to manage the risk as part of normal practices.

A Minister is required to consult publicly before making a roll-out determination, allowing businesses to advise of potential conflicts with existing contracts. The Minister must also have regard to the National Electricity Objective, which ensures implications for existing contracts are considered when making a determination. The Minister can only make a decision on the information provided – it is the responsibility of the businesses to inform the Minister of any issues they believe should be considered.

#### **4. Consultation**

Energy Australia submitted that the consultation should occur at the time a draft determination is developed, while the Consumer Utilities Advocacy Centre questioned why the consultation process for pilots and trials was different to that of roll-out requirements and argued that both requirements were inadequate. It was further suggested that the MCE should develop a stronger consultation mechanism and provide a detailed framework for consultation.

Recognising the importance of consultation, sections 118C and 118E were inserted. These require: Ministers to consult with persons who, in the Minister's opinion, have an interest in a pilot determination; and public consultation for a Ministerial roll-out determination. SCO believes it is not appropriate to prescribe the consultation processes in the NEL and that it is more appropriate that they are developed to suit the requirements of each jurisdiction.

#### **5. Review date**

Some stakeholders stated that there should be a mandatory review of the NEL provisions included in the legislation to act as a safeguard against Ministers continuing to hold powers indefinitely, that is, beyond the period necessary to achieve the policy objectives of the roll-out. In recognition of this concern MCE committed, in the second reading speech, to review the amendments by 2020.

#### ***Issues beyond the scope of the NEL amendments***

The purpose of the NEL amendments is to give the Minister the necessary heads of power to mandate a smart meter or direct load control (DLC) pilot or trial, and a smart meter roll-out. Several submissions raised issues that are beyond the scope of the NEL amendments, including issues related to cost recovery and consumer protection. SCO recognises that these issues are important, but they are being addressed through other processes.

#### **6. Economic regulation of costs and benefits**

Stakeholder submissions raised several issues related to the economic regulation of costs and benefits, including:

- the assessment of costs and benefits;
- materiality for distributor pass through events;
- cost recovery for retailers;

- the pass through of benefits; and
- the risk that transitional delivery of smart meter services risks the full set of services being delayed beyond the end of the roll-out.

Under the existing framework the economic regulation rules for distributors are located in Chapter 6 of the NER. Economic regulation of mandated smart meter roll-outs and pilots is also able to be addressed within the NER, with the assessment of allowable revenue and prices continuing to be done by the Australian Energy Regulator (AER) for distribution businesses.

At the MCE's request, the AEMC has provided advice on the current economic regulatory framework to ensure it gives distributors reasonable opportunities to recover the efficient, direct costs of smart meters roll-outs and pilots, while providing incentives to ensure benefits are passed through to consumers as soon as possible.

The MCE will assess the AEMC's advice and develop a rule change package to be submitted to the AEMC in due course. This package will go through the standard AEMC rule change process, giving stakeholders a further opportunity to engage in these issues. The AEMC's advice is available at the AEMC Website:

[www.aemc.gov.au](http://www.aemc.gov.au).

Retailers suggested that the Australian Energy Market Agreement (AEMA) should be amended to acknowledge that retailers will incur costs in transitioning to a smart meter environment, and that these should be passed through in regulated retail prices. Provision for retail cost recovery is not appropriate in the NEL, and under the AEMA jurisdictions remain responsible for retail price regulation. SCO considers that changes to the AEMA to accommodate smart meters are not necessary or appropriate, given that a smart meter roll-out is a one-off event. The mechanism by which individual jurisdictional authorities consider the merits of changes to regulated retail prices was documented in the response to submissions on the first exposure draft of the NEL amendments.

## **7. Need for sufficiently robust National Energy Customer Framework**

The South Australian Council of Social Service (SACOSS) was concerned that the consumer impacts of the smart meter roll-out have not been regarded as being of adequate importance, in that the negative impacts are clear and the positive are not. Consistent with this view SACOSS suggested that any legislation and regulations guiding smart meter implementation should be subservient to a robust consumer protection framework, ideally in the form of the National Energy Customer Framework (NECF).

SCO is conscious of the consumer impacts of smart meter roll-outs and is currently undertaking a review of consumer protections. The first stage of this review considered issues directly related to the NECF, starting with a draft policy paper released by SCO in August 2009 and concluding with release of *Current Status and Response to Submissions on Draft Policy Paper One* in December 2010.

SCO intends to develop a single package of smart meter consumer protection measures to be implemented in the NECF (and other instruments if necessary). Any required legislative amendments will be made through the South Australian Parliament whilst required rule changes are expected to be submitted to the AEMC

for its consideration. Changes to relevant National Electricity Market (NEM) procedures to support smart meters are expected to be undertaken via existing processes. This package is being further developed following advice from the NSSC on business-to-business arrangements and technical standards to support the delivery of smart meter services.

SCO notes that the Victorian Government is initially implementing consumer protections in its state-based instruments to support the current smart meter roll-out in Victoria. Arrangements to transition these protections to the national regime will be considered as part of Victoria's NECF implementation strategy.

SCO also notes that the AEMC intends to consider consumer protection issues related to emerging technology, such as smart meters, in Stage 3 of the Review of Demand Side Participation in the NEM.

The NEL amendments give the power to a Minister to mandate a roll-out of smart meters in their jurisdiction. This Ministerial power will only be exercised depending on particular circumstances in each jurisdiction and/or region. SCO expects that as part of considering a roll-out, each jurisdiction may need to consider the transitional implications for any concessions or consumer protections within its area of responsibility.

## **8. In-Home Display and potential lack of price information**

SACOSS was concerned that a smart meter in itself will not provide easily visible price signals to consumers. To ensure price signals are visible SACOSS recommend an in-home display (IHD) be included as part of the roll-out.

While an IHD is not part of the national minimum functionality, the interface to a home area network is required and will enable connection of an IHD as well as load management functions for the control of household appliances.

The national CBA undertaken by NERA Economic Consulting (NERA) assessed the costs and benefits of including an IHD in the national minimum functionality. NERA concluded that there is no basis for including an IHD in the national minimum functionality, due to a lack of certainty about its impact on demand response.<sup>2</sup> NERA also noted that the IHD provided opportunities to facilitate competition between retailers and drive innovation in these products, which may be impeded with mandatory provision.

Not including an IHD in the national minimum functionality means that consumers retain the choice of whether they would like an IHD, including what type. This decision also avoids imposing the additional cost of the IHD on all consumers. It will also give the opportunity for an IHD to be part of new tariff offerings by retailers. There may also be other ways for consumers to receive feedback on their energy consumption, such as via the web or mobile phone.

SACOSS was also concerned that there is a risk under a time-of-use (TOU) pricing regime that there will be a shift in exposure to wholesale peak price management from retailers to end users.

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<sup>2</sup> Cost Benefit Analysis of Smart Metering and Direct Load Control Overview report NERA 2008

Smart meters will enable retailers to develop tariff offers and other services which may include a price signal, based on the time of day the electricity is consumed, which more accurately reflects the input costs of that electricity. SCO expects that these TOU offers may include different prices for peak, shoulder and off-peak times. This type of pricing structure is common for industrial and large users as half-hourly meter data enabled by smart meters allows retailers to better understand consumption patterns and therefore tailor tariff offers to customer needs.

SCO expects that retailers will continue to manage wholesale price risks on behalf of their customers as this is less complicated and more cost-effective than passing on the price fluctuations of the wholesale market to high numbers of low volume customers. However some alignment of retail tariff rates with the underlying wholesale load profile could also be expected, which would encourage demand reduction during peak consumption periods. As these may produce benefits across the whole supply chain, they would be expected to be passed on to consumers in the long term.

SCO is conscious of the consumer impacts of smart meter roll-outs and is currently undertaking a review of consumer protections, as outlined above.