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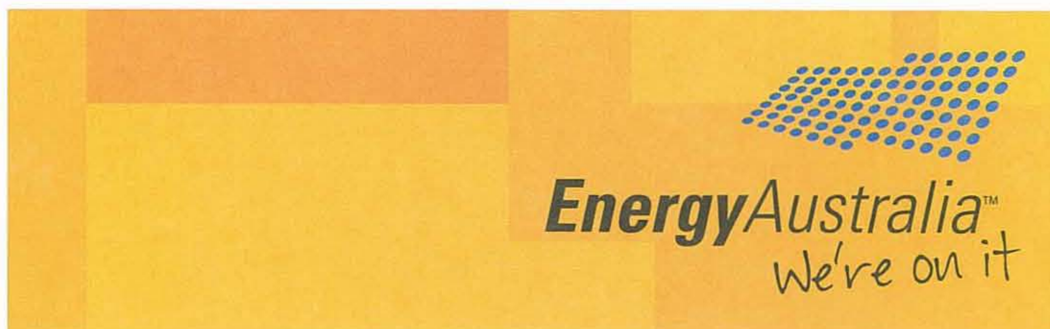

10 February 2009

Manager, MCE Secretariat
Department of Industry, Tourism and Resources
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By email: MCEMarketReform@ret.gov.au

Dear Sir/Madam

Exposure draft of amendments to the National Electricity Law in relation to smart meters

EnergyAustralia welcomes the opportunity to comment on the proposed legislative amendments to the National Electricity Law (NEL) relating to smart metering released on 24 December 2008 and the discussion paper made available to stakeholders on 3 February 2009. The proposed legislative changes are an important step towards ensuring firstly, that appropriate pilots and trials are conducted to verify the costs and benefits of smart metering, and secondly to enable informed jurisdictional decisions regarding the nature and timing of any future smart meter roll outs.

The proposed legislative changes we understand are intended to provide the framework for jurisdictional Ministers to determine pilot and trial requirements as well as any future roll out obligations. Importantly, the legislation must also enable certainty regarding cost recovery by distribution system operators and owners.

EnergyAustralia generally supports the policy intent of the proposed amendments. Whilst EnergyAustralia appreciates that the NEL amendments have been developed to enable pilots and trials to be mandated quickly and without a full rule change process, it would be more consistent with the general structure of the NEL and National Electricity Rules (Rules) for the subject matter of these NEL amendments to be addressed in the Rules.

Currently the NEL establishes the NEM and addresses the key powers and obligations of the NEM bodies and participants. Substantive obligations relevant to the more detailed operation of the NEM such as those the subject of the proposed Smart Meter NEL amendments are best addressed in the Rules. For example, the Rules currently impose a range of very significant obligations upon market participants and NEM bodies relating to the operation of the spot market, network planning and development, rights and processes for connection, power system security, all aspects of metering and customer transfer as well as the economic regulatory determination process for both distribution and transmission. It is clearly inconsistent with current NEL framework for the trial and roll out of smart metering services to be enshrined in the NEL with limited scope for review and further development. The NEL amendments to implement smart meter trials and roll-outs could be confined to authorising a one-off rule change to provide for Ministerial metering determinations. The balance of the provisions

proposed for the NEL could then be included in the authorised Rule change. However, if in the interests of time the proposed detailed NEL amendments do proceed, they should include "sunset" provisions so that these provisions can be repealed on the recommendation of the MCE once appropriate Rule changes have been implemented and made.

With respect to the policy intent there are also a few areas where clarification is necessary or changes are suggested.

1. There is no requirement for the Minister to consult with affected DNSPs before issuing a Ministerial Metering Determination. Whilst Ministers may undertake informal consultation during the development of such a determination, it is very important that DNSPs (and stakeholders more generally) have an opportunity to review and comment on the terms of a draft determination before it is formally issued. In NSW there is no other basis upon which the Minister would be required to consult on the proposed determination and as a matter of good regulatory design the national framework should provide a clear and consistent obligation to apply across all jurisdictions. It is suggested that the Minister be required to provide the affected DNSP with a copy of the draft determination and publish a notice of the draft determination in a national newspaper and allow a period of at least 21 days for submissions to be made in relation to the draft.
2. There is some uncertainty as to the distinction between smart meter "trials" and "pilots". We would support inclusion of a definition for "pilots" and "trials" in line with the National Stakeholder Steering Committee (NSSC) Work Plan.
    a. A 'pilot' means the testing of the integrated smart meter infrastructure on an end to end basis across nominated classes of consumers on a temporary basis.
    b. A 'trial' means the testing of one or more components of the smart meter infrastructure to gauge its performance under specified conditions.

    If these definitions remain in the NEL we also suggest that they should be capable of amendment or even substitution through the Rules. It is likely that these definitions may develop over time as the Rules to support the smart meter pilots and roll out are developed. The inclusions of these definitions in the NEL without scope for change may hinder such development.

    There is also an important additional distinction between activities undertaken by DNSPs for their own investigations, and pilots specifically requested by the Minister to aid a decision on a future roll out. Given both types of smart metering undertakings are likely to occur simultaneously, care should be taken to ensure that these definitions do not preclude the AER accepting expenditure in relation to services which are outside the mandated pilots and trials. For example expenditure in relation to a trial mandated by the Ministerial Metering Determination would fall within the scope of expenditure required to achieve operating and capital expenditure objective (b) in clauses 6.5.6 and 6.5.7 of the Rules. This objective relates to complying with all applicable regulatory obligations or requirements associated with the provision of standard control services. However, a DNSP may also wish to put forward expenditure to the AER as part of ifs regulatory proposal that is not required to meet a regulatory obligation or is requirement for other operating or capital expenditure objectives in clauses 6.5.6 and 6.5.7 of the rules. This consistency with the existing rule framework is more likely to be achieved if the proposed amendments are incorporated as part of the Rules.

3. A similar issue arises in relation to the definition of "smart metering services". The effect of the proposed amendments will be that "smart metering services" will only be those services which are specified under the Rules as required for smart metering infrastructure and which comply with the standards specified under the Rules. This means that "smart metering services" for the purposes of a mandated obligation under the NEL could be very narrow or could be very broad. If the Rules are amended so that the meaning of mandated smart metering services is very narrow, this should not preclude the AER approving expenditure related to services which do not meet the mandated definition but which may still be justifiable expenditure in the circumstances of a particular DNSP. Even better, distributors should have scope to propose innovative programs which provide overall benefits.

4. The proposed legislation enables jurisdictional Ministers to confer very broad powers and functions on the AER (section 118B (5)). EnergyAustralia understands from the stakeholder forum held on 5 February 2009 to explain the proposed amendments that this provision is intended to allow the AER to be involved in developing the actual scope and nature of the required trials and pilots in addition to determining the appropriate cost recovery. EnergyAustralia has very serious concerns with this proposed approach and recommends that the purpose and content of clause 118B(5) be revisited for the following reasons.

   - Firstly, the AER is not the appropriate body to be involved in the development of the smart meter pilots and trials. It has no demonstrated experience or expertise in relation to such matters.

   - Secondly, such an approach puts the AER in a difficult and conflicted position. Its involvement in the development of the required trial or pilot to be imposed may prevent it from approaching the issue of cost recovery in an objective and independent manner. EnergyAustralia requests that there be separate and transparent governance arrangements around the development and the assessment of the likely costs of any trial or pilot.

   Irrespective of whether the functions are broadened or not, the AER should be required to have regard to the revenue and pricing principles in the NEL when exercising any power in respect of a Ministerial Determination. It is understood from the stakeholder forum that the intention is that the revenue and pricing principles would apply to the exercise of these powers by the AER and the intention is not to put in place a provision which enables Ministers or the AER to avoid the application of the revenue and pricing principles.

   It was further indicated at the stakeholder forum that the Minister could use its powers to effectively cap the cost which may be recovered in relation to trials and pilots irrespective of the cost of carrying out the pilot. Technically, the draft legislation allows the Minister to constrain cost recovery whilst still mandating trial and assessment deliverables, or impose obligations which inflict commercially disadvantageous outcomes for distributors, such as reduced system security, reduced reliability or a worsening of other service levels. This is inconsistent with the MCE policy direction of efficient cost recovery and inconsistent with the Revenue and Pricing Principles in the NEL. Any approach allowing the Minister to cap the costs that may be recovered by a DNSP, or to apply an alternative regulatory model to the assessment of cost recovery (or as drafted confer on the AER scope to act without commercial or technical responsibility) must be avoided.

   EnergyAustralia submits that cost recovery for pilots and trials should be processed through the

existing cost pass through arrangements under the Rules. Essentially, the only matter which needs to be addressed in the legislation to achieve this under the current Rules is to ensure that the costs incurred in carrying out a trial or pilot are not ignored on the grounds of materiality. This could be addressed simply by an amendment to the Rules (both the existing Chapter 6 and the ACT/NSW Transitional Rules) which provided that a positive change event includes a Ministerial pilot metering determination (with no reference to materially increasing costs). If these amendments proceed through amendments to the NEL, this could be done by a one off rule change by the SA Minister coinciding with the commencement of the legislation. The draft Bill would need to be amended to provide for such a rule change. A less optimal way would be for the legislation itself to provide that a Ministerial pilot metering determination is a positive change event for the purposes of the Rules.

Clause 118J (2) appears to confer additional powers upon the AER which we believe are inappropriate. If EnergyAustralia's suggestion is adopted, this clause will also be unnecessary as the AER's powers will be exercised under the general cost pass through arrangements in the Rules.

5. Clause 118C (5) states that a Ministerial smart meter roll out determination has effect according to its tenor despite anything to the contrary in any agreement or contract. The purpose and effect of this provision is not clear from the drafting. It was indicated at the stakeholder forum that this provision was directed at contracts for the supply of "basic" meters. EnergyAustralia submits that this clause is unnecessary for the legislation and questions whether the provision would have such an effect.

6. EnergyAustralia also notes that the legislation makes specific references to Victoria operating under alternative legislation. This would appear to be both unnecessary and inappropriate within a National Electricity Market. The proposed legislative amendments offer the scope for jurisdictional Ministers to make there own determinations for smart metering in accordance with agreed national laws and regulations. This should be an adequate and consistent framework for all jurisdictions, including Victoria.

7. The MCE has announced that it will request the AEMC to undertake a review of economic regulatory aspects of the Rules in relation to smart metering. Further detail in relation to this review was provided in the discussion paper and at the stakeholder forum. Whilst EnergyAustralia does not object to the review as such, EnergyAustralia is very concerned that there may be a move to create specific rules for economic regulation in relation to smart meters on the basis that the issues which arise in relation to smart meters are in some way different or unique. An example given in the MCE SCO discussion paper is "lack of historical data makes it difficult to estimate future costs of new technology". It appears they have overlooked that smart meter technology has been part of the NEM since its inception, albeit not on the scale now being contemplated. Forecasting for new technology is not an issue confined to smart meter technology. Technological advances are occurring in a broad range of areas relevant to the planning, design, construction, operation and maintenance of distribution networks and this is considered and dealt with by DNSPs when planning and forecasting its expenditure requirements. Smart meters are no different in this regard.

For these reasons EnergyAustralia requests that care be taken to ensure that the terms of reference do not unduly take the AEMC review down a predefined path that forces separate or different rules for economic regulation of smart metering without checking whether the issues to be addressed apply to economic regulation of direct control services more generally. We would

prefer a broader terms of reference so a full range of issues affecting smart meter deployment can be addressed.

Finally, one matter that should be addressed by the review is the existing DNSP tariff provisions. Most of the emphasis of the SCO has concentrated on the physical infrastructure of the meter itself and how it is deployed. Issues of metering provision, tariff assignment and pricing principles for distributors and retailers must also be considered if a Minister is to be properly informed about the relative merits of smart meter technology.

EnergyAustralia has been a strong advocate for the establishment of the NSSC and believes this committee may be better placed to make recommendations on some of the transitional arrangements referred to in the discussion paper, specifically on the movement to an exclusive distributor led roll out and the other changes required to Chapter 7 of the Rules.

Should you have any enquiries regarding this submission please contact Mr Keith Yates on (02) 4951 9359.

Yours faithfully

TREVOR ARMSTRONG
A/Executive General Manager
System Planning and Regulation