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Manager, MCE Secretariat
Department of Industry, Tourism and Resources
GPO Box 9839
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By email: MCEMarketReform@ret.gov.au

Dear Sir/Madam

Second 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, along with the proposed Transitional Rule and Policy Response paper made available to stakeholders on 3 July 2009. EnergyAustralia recognises the importance of appropriate regulatory instruments to support necessary pilots and trials to verify the costs and benefits of smart metering. It is also recognised that regulatory instruments will be required to support and enable informed jurisdictional decisions regarding the nature and timing of any future smart meter roll outs.

The proposed legislative changes 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, on which the burden for conducting pilots and roll outs will lie.

EnergyAustralia notes that many of our suggestions to the original draft smart meter amendments were adopted. In particular, the second draft removes the prospect of additional powers being conferred to the AER and for greater consultation prior to any ministerial determinations on smart meter pilots or roll outs. EnergyAustralia generally supports the policy intent of the proposed amendments and acknowledges that these changes have greatly improved the quality of the legislation.

There are a number of areas, however, which EnergyAustralia believes still require changes to ensure the objectives of the amendments are achieved in an efficient manner.

1. Location of provisions between the Law and the Rules (and timing)

EnergyAustralia has a continuing concern about the extent to which the proposed legislation is consistent with the current structure of the NEL and Rules; this and several other comments are directed at ensuring that the smart meter provisions are consistent with the more general provisions of the NEL such as those relating to consultation and confidential information. We

note that the MCE SCO has considered our suggestion to include a one-off rule change to achieve the desired regulatory provisions and has decided to retain the original architecture. EnergyAustralia still regards changes to the NER as a more appropriate and consistent framework for delivering the required policy intent relating to smart metering pilots and roll outs. Such an approach would be more consistent with the current approach to the NEL and Rules whereby powers relating to such matters as metering are contained in the Rules. Consistent with this, EnergyAustralia supports the MCE SCO statement in its Policy Response paper that relevant supporting provisions will be included in the NER in conjunction with the work being coordinated by the NSSC. It follows that legislative changes at this time should be minimised pending the full review being conducted by the NSSC. In this regard, the NEL amendments should be limited in this instance to cover only pilots, trials and assessments. Amendments to cover mandated roll outs for smart meters could be introduced following the NSSC's deliberations and advice.

2. Consultation on Ministerial Determinations

EnergyAustralia welcomes the provisions which provide for Ministers to consult prior to making a Ministerial pilot metering determination or a Ministerial smart meter roll out determination. However, EnergyAustralia is concerned that this consultation will not be optimised unless the Minister is required to provide a draft determination at the time of the consultation. The proposed provisions (118C and 118F) provide for the Minister to consult on the "contents of the determination". The drafting of regulatory instruments such as these determinations involve a significant amount of consideration and deliberation and it is only when an instrument is actually drafted that all relevant matters are considered and addressed. If consultation occurs before a determination is drafted then it is possible that further consideration will be required and substantial changes made after consultation. This is obviously of particular concern for DNSPs whose interests are directly affected by the proposed determination. It is for this reason that EnergyAustralia requests that consultation occur with respect to a draft determination. This would also be consistent with the regime for consultation in respect of Regulatory Information Notices in section 28J of the NEL.

3. Pilot cost recovery and materiality

EnergyAustralia previously submitted that cost recovery for pilots may not be assured under the proposed amendments because the rules require that an event giving rise to a cost pass through application materiality increase the cost of providing direct control services before an event can be considered to be a positive change event. The second exposure draft has not addressed this issue. EnergyAustralia supports the MCE SCO proposal to seek the AEMC to review the NER in this regard. It is also noted that the AER, in its 2009 Pricing Decision for NSW DNSPs, has attempted to address this issue by providing for an additional pass through event known as "smart meter event" with a low materiality threshold. Whilst this signals the AER's intention to apply a low materiality threshold, it is far from clear whether this is legally effective given the overriding obligation upon the AER to be satisfied that an event leads to a material increase in the cost of providing direct control services or alternative control services. A further issue arises in NSW due to the classification of Type 1-4 metering as "unregulated distribution services" for the regulatory control period 2009-2014. For the legislation to work as intended, pilots must be considered as a cost in providing direct control services

Under clauses 6.2.3A and 6.2.3B (of the Transitional Chapter 6 Rules which apply in NSW for the 2009-2014 period) Type 1-4 Metering Services are not direct control services and are not classified as either standard control services or alternative control services. As a consequence, the cost pass through provisions would have no direct application if an obligation was imposed

in relation to metering classified as Type 4. Equally, a meter under a mandated pilot no longer should be subject to contestability, if the pilot is to be beneficial (refer below).

Whilst there is scope for the AER to reclassify unregulated services as Alternative Control Services, this could only occur in limited circumstances provided for in the Rules as a punitive action where the AER had formed the view that the DNSP was not complying with Excluded Services Rule No1 of 2004. For these reasons, in the absence of a rule change to address the classification of small customer smart metering (or at least the classification of a smart meter under a mandated trial) and the materiality threshold for pilots and trials, EnergyAustralia remains of the view that it is very unlikely, at least in NSW, that an obligation to carry out a pilot imposed during the 2009-2014 period would constitute a positive change event which could be the subject of a successful cost pass through application to the AER.

4. **Contracting between Networks and Retailers**

The proposed legislative amendments impose an expectation that Network businesses will undertake all necessary pilots and trials for smart metering in response to a ministerial determination. However, it is recognised that Retail businesses, and perhaps other stakeholders, may be required to be involved in such studies in order for a Network business to fulfil its obligations under a ministerial pilot determination. In these circumstances EnergyAustralia submits that care will need to be taken to ensure the terms of any ministerial obligations can responsibly be delivered and also that Network integrity and security is protected during such pilots. Networks will need to retain control of system operations during any pilots or trials of smart metering.

5. **Exclusivity**

The timing of these proposed amendments to accommodate both pilots and roll outs means that they now include rule changes to allow for Network exclusivity during the roll out period. As previously mentioned, we believe legislative amendments to cover roll outs should be deferred until after the NSSC program has properly considered the issues and provided its advice to the MCE. One of the concerns highlighted by the proposed amendments is the drafting of a Transitional Rule to cover the roll out of smart meters. The intention of the proposed rule change is to "preserve the current architecture" of the NER whilst enacting the MCE Statement of Policy Principles which states that network service providers "*should have exclusivity over meter provision and responsibility for related metering data provision ... during the period in which the network service provider must complete the mandate*". EnergyAustralia submits that the proposed Transitional Rule does not preserve the current architecture of the NER, but instead places a timeframe on when metering responsibility for small customers will transition to Retailers. Responsibility for metering to small customers is currently assigned to Networks under the NER and the proposed rule change pre-empts consideration of this arrangement by the NSSC. This is a further demonstration of the need to defer the proposed changes relating to meter roll outs until after the NSSC has provided its advice to MCE.

6. **Confidentiality of Information**

Proposed sections 118B(4) and (5) have the effect of requiring DNSPs to provide information derived from smart meter trials to third parties and otherwise disclose confidential information. The effect of these provisions is that a DNSP may be required to disclose either its own confidential information or the confidential information provided by third parties involved in smart meter trials without regard to the confidential nature of that information or the consequences of disclosure. This will have obvious implications for the willingness of third parties to participate in trials. EnergyAustralia submits that further consideration should be

given to these provisions. Firstly, the disclosure should be characterised as a disclosure by the Minister and, secondly, provisions similar to those which apply under Division 6 of Part 3 of the NEL in relation to confidential information provided to the AER should be applied to this information before it can be required to be disclosed by the Minister. Those provisions provide for balance and fair process to be followed before information which has been provided in confidence is disclosed.

EnergyAustralia has been a strong advocate for the establishment of the NSSC and believes this committee is well placed to undertake a thorough review of regulatory requirements to accommodate smart metering. It is recognised that there is some imperative for legislative changes to allow necessary studies to be conducted to determine more accurate costs and benefits of smart metering infrastructure. However, EnergyAustralia believes it is pre-emptive to introduce the proposed legislation for mandating roll outs of smart meters. We believe this may undermine the work of the NSSC and constrain its advice and recommendations. EnergyAustralia also considers that the changes proposed relating to mandated smart meter roll outs will require subsequent changes following the detailed evaluations being done by the NSSC.

Should you have any inquiries regarding this submission please contact Mr Keith Yates on (02) 49519359.

Yours faithfully



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