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Energy Networks Association response to second exposure draft of legislative amendments in relation to smart meters

The Energy Networks Association (ENA) welcomes the opportunity to provide comments on the second exposure draft of the *National Electricity (South Australia) (Smart Meters) Amendment Bill 2009* and accompanying *National Electricity Amendment (Ministerial Smart Meter Roll Out Determinations) Transitional Rule 2009*.

Background

ENA is the peak national body for Australia's energy networks which provide the vital link between gas and electricity producers and consumers. ENA represents gas distribution and electricity network businesses on economic, technical and safety regulation and national energy policy issues.

Energy network businesses deliver electricity and gas to over 13.5 million customers, employ more than 40 000 people and contribute approximately 1.25 per cent to Australia's gross domestic product. Energy is delivered across Australia through approximately 48 000 km of transmission lines, 800 000 kilometres of electricity distribution lines and 81 000 kilometres of gas distribution pipelines. Energy network businesses are valued at more than \$48 billion and annually undertake investment of more than \$25 billion in network operations, reinforcement, expansions and greenfields extensions.

Response

ENA supports a number of the changes since the first exposure draft, outlined in the *Ministerial Council on Energy (MCE) Standing Committee of Officials (SCO) Policy Response* (Policy Response) to submissions on the first exposure draft; however, industry considers that some matters require further consideration.

Broadly, industry's concerns are:

- Given that for most jurisdictions a smart meter roll out is not in the immediate future, expediting the legislative amendments for roll outs seems unnecessary and risks compromising the effectiveness of these reforms.
- Given that the amendments are necessary to provide legislative support for pilots and trials, caution must be exercised in directing Ministerial smart meter pilots before the cost recovery issues referred to the Australian Energy Market Commission (AEMC) for review are properly considered.
- The confidentiality arrangements are unclear and do not yet appear to adequately protect contracting parties.

- There may be practical difficulties which impede distributors from contracting with retailers to conduct smart meter pilots and trials.
- Exclusivity arrangements for smart meter roll outs should be deferred until after the National Stakeholder Steering Committee (NSSC) has considered preferred arrangements and provided its advice to the MCE. If the MCE decides to continue to include legislative provisions for roll outs in the proposed amendments then rule changes for exclusivity should be inserted directly into chapter 7 of the National Electricity Rules (NER), consistent with existing metering regulation for residential and small business customers.

Legislation required to support pilots and trials

While ENA has concerns with aspects of the amendments as outlined below, ENA recognises the importance of providing certainty to businesses that are undertaking or intend to undertake smart meter pilots and trials. Therefore, ENA supports the legislative amendments in providing the heads of power to Ministers to make a determination in regard to such pilots and trials, provided it is done under circumstances where cost recovery for distributors is certain. ENA notes the view of the MCE SCO position stated in the Policy Response that because businesses are mandated to conduct pilots and trials it may be sufficient grounds for the costs to be considered material by the AER. Until the detail of cost recovery issues can be finalised, ENA supports the proposed amendments in relation to smart meter pilots and trials, as they provide a measure of confidence that the AER will properly consider the costs of mandated pilots.

Rush to enact legislative changes for roll outs seems unnecessary

While industry recognises that legislation for pilots and trials is important to have in place to allow cost recovery for businesses involved in these pilots and trials, the benefits from expediting the legislative amendments for smart meter roll outs are unclear. ENA members consider that sufficient time has not been given to developing the technical and operational aspects of the smart metering framework. The NSSC is currently advising the MCE on these aspects of the framework, as noted in MCE SCO's Policy Response to submissions on the first exposure draft:

Significant analysis is required to define smart metering services and the long run responsible person for these services. SCO expects the NSSC to define smart metering services, roles and responsibilities, and draft possible rules ... Once this process is complete it may be necessary to request a subsequent review of who should be the responsible party for specific services in the long run and the development of any necessary transitional rules. ¹

It is unclear why legislation governing the roll out of smart meters should be in place prior to having a clear understanding of the technical and operational aspects of the framework. The legislative package relies on the supporting regulatory framework, which is not fully developed. The implications of rushing the legislative package could be that the changes to the National Electricity Law (NEL) might not adequately deal with all the issues that arise in developing the accompanying regulatory framework, especially as key definitions have still not been agreed. ENA considers that the legislative amendments governing mandated roll outs should be delayed until the regulatory framework is completely developed.

¹ MCE SCO National Electricity Amendment Bill— Smart Meters Policy Response, June 2009, p. 15

AEMC cost recovery matters resolved

ENA notes that MCE SCO has recommended that the MCE refer a number of issues relating to cost recovery for pilot determinations to the AEMC for review. ENA supports the resolution of issues referred to the AEMC, including:

- cost pass throughs for alternative control services;
- the ability of the Australian Energy Regulator (AER) to assess Ministerial pilot determinations in terms of materiality to allow distribution businesses to pass through these costs; and
- whether the current economic regulation framework under chapter six of the NER is sufficient to work effectively with pilot or roll out determinations made under the legislative amendments.

The issues to be referred to the AEMC are vital to businesses' ability to recover the costs they incur in conducting a mandated smart meter pilot. ENA submits that these issues are important to the effective operation of the economic regulation provisions in the NER and serve to protect distributors', retailers' and consumers' legitimate interests and that much of the success of the national smart metering roll out depends on their effective operation. Therefore, to the extent that it does not delay cost recovery for businesses participating in pilots and trials in the short term, sufficient time must be allowed for the conduct of this review, providing scope for thorough and considered analysis, and consultation with all relevant stakeholders.

Since the NER does not define a materiality threshold for cost pass throughs, there is some uncertainty surrounding businesses' ability to recover the costs of complying with a mandated pilot. ENA notes, that the AER's recent decisions in respect of the ACT and NSW electricity distribution networks appear to apply a materiality threshold to regulatory change events, while the MCE SCO position indicated that the fact businesses are mandated to conduct pilots may be sufficient for costs to be considered material. This matter needs to be addressed. ENA therefore considers that the MCE SCO's intent that pilots and trials be considered material under pass through provisions should be reflected in the Rules.

Allowing the AEMC to properly consider all the cost recovery issues that it is intended to review is important. However, it is also important that all businesses participating in pilots and trials prior to the completion of these reviews have sufficient mechanisms for recovering costs incurred by participating in those pilots and trials. Therefore, ENA supports the proposed amendments to allow for a determination of pilots and trials and considers that any obligation to conduct a pilot or trial should be subject to AER approval of costs associated with fulfilling the direction.

Confidentiality arrangements seem unclear and undeveloped

Industry acknowledges that information gathered from smart meter pilots will be important for decisions regarding the mandated roll out and implementation of smart meters. However, much of the information required is likely to be commercially sensitive. In some cases, the party required to provide or release information may not be the party adversely affected by the provision or release of that information. It is important that businesses involved in smart meter pilots are given the opportunity to protect commercially sensitive and confidential information.

ENA notes that MCE SCO has addressed the issue of confidentiality in its Policy Response to submissions made on the first exposure and introduced section 118B(2)(a):

- (2) *In making a Ministerial pilot metering determination, the Minister must have regard to –*
 - (a) *the national electricity objective ...*

ENA is unclear as to how having regard to the National Electricity Objective at the time of making a pilot smart metering determination will serve to protect commercially sensitive and confidential information that may arise as a result of a pilot or trial. This information may not be anticipated at the time of making the determination. It is also unclear how such an obligation may work in practice.

Industry is concerned that, if publically revealed, some of the information that is likely to be supplied in support of the smart meter pilots may threaten that business', or another business' financial viability, particularly if the technology being trialled does not work. It is difficult to pre-empt the specific information that is likely to cause serious damage to an affected business, but there is a possibility that publicising commercially sensitive information will place the affected business in jeopardy. These businesses may, justifiably, have a strong aversion to engaging in pilots if they feel they are at financial risk. Businesses without an obligation to take part in the trial, such as those contracting with a distribution business may therefore choose not to take part in a trial in order to protect their reputation. ENA submits that as far as practicable, sensitive information should be supplied in confidence to the Minister and not released publicly.

In some cases, there are significant benefits to releasing information to the public. ENA notes that MCE SCO has introduced a provision that allows Ministers to require information that is intended for public release to be released in a manner that does not identify the person to whom the information relates—section 118B(5)(c). ENA appreciates that MCE SCO recognises the need to protect commercially sensitive information, but considers that stronger provisions are needed to protect the identity of the affected party when Ministers require the public release of information. As currently drafted, a Minister does not necessarily have to collect and publicise information in a way that protects the identity of the affected party. Instead Ministers, when making a determination, should be bound by the obligation to protect the affected party's identity when releasing information to the public, at least to the extent that the affected party wishes the information to remain confidential.

To protect commercially sensitive information, ENA suggests that information for public release should be:

- gathered and reported in a manner that protects the identity of the affected party;
- aggregated to ensure that the information cannot be attributed to the relevant distributors responsible for the pilots;
- released only if it is essential to assessing the costs and benefits of potential smart meter roll outs, and
- released only after adequate consultation with the person to whom the information relates.

Practical difficulties may impede distributor-retailer contracts

The proposal that distributors contract a retailer to provide trials and assessments services assumes there will be no difficulty in establishing the distributor/retailer contract, but that may not be the case. These contracts will require distributors and retailers to reach an agreement on the scope and terms of the contract. However, retailers may not agree with a distributor's proposed terms, even where these terms are consistent with the distributor's obligations under a Ministerial smart meter pilot determination. This may be a particular problem in respect of customer impact studies. ENA supports Networks being responsible for establishing such studies; however, caution will need to be exercised by Ministers in making pilot determinations to ensure project scopes reflect such limitations. ENA notes that it is proposed that the AEMC review the effectiveness of the contractual model for retailer engagement and cost recovery, which ENA considers to be appropriate.

It is also important that these studies ensure that distributors retain responsibility and control over system integrity and security. As distributors are responsible for maintaining network security, it is important that the issues of retailer access to distributor systems and load management are properly considered in the context of these proposed contracts.

Exclusivity should be placed in chapter seven

Industry does not support progressing the proposed legislative amendments and rule changes relating to roll outs of smart meters at this time. However, should MCE SCO proceed with those amendments, ENA proposes an alternative rule change approach.

Industry appreciates MCE SCO's consideration of the exclusivity arrangements and notes that they are proposed to be addressed in chapter 11 of the NER. Industry agrees that the definition of the *responsible person* should remain in the NER; however, submits that it should not be a transitional rule. Instead, industry contends that these provisions should be achieved by simple modifications to chapter seven, which preserves the current arrangements of Networks being the *responsible person* for metering to the mass market.

Allowing the exclusivity provisions to expire at the completion of the roll out determination, as proposed by MCE SCO in the transitional rule, seems to pre-empt that competition in metering services is necessarily more efficient than continuing regulation. At this stage, there has been no judgment as to whether it is better to regulate these services or allow contestability. By placing these provisions into chapter seven, a situation whereby contestability is predetermined regardless of its merit, can be avoided. Incorporating the initial rule into chapter seven leaves open the opportunity for the NESC to fully consider the most efficient long-term regulation of smart metering and develop its proposed rule changes and advice for MCE SCO.

Separation of pilot and roll out legislative packages

As previously discussed, industry does not support progressing legislative changes to facilitate the roll out of smart meters at this time. However, industry acknowledges that legislation governing smart meter pilots and trials may help facilitate the conducting of pilots and trials in the short-term. Therefore, industry submits that changes to legislation, and accompanying rules, relating to smart meter pilots and trials and smart meter roll outs are two separate issues, which require separate consideration. The issue of legislating Ministerial pilot determinations is important to progress at this time, provided it is done under circumstances where cost recovery of distributors and retailers is certain. However, legislative changes regarding the roll out of smart meters appear to be premature and require further consideration and development before they are enacted.

If you have any questions, or would like to discuss any of these issues further, please contact Tim Kane at tkane@ena.asn.au or (02) 6272 1520.

Yours sincerely



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