



8 October 2015

Ms Ann Pearson
Senior Director
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Reference: ERC0182

Dear Ms Pearson

RE: Meter Replacement Processes Directions Paper

ERM Power Limited (ERM Power) welcomes the opportunity to respond to the Australian Energy Market Commission's (the Commission) Directions Paper on Meter Replacement Processes. We appreciate the opportunity to comment on the Commission's proposed policy position in advance of the draft determination.

About ERM Power Limited

ERM Power is an Australian energy company that operates electricity generation and electricity sales businesses. Trading as ERM Business Energy and founded in 1980, we have grown to become the fourth largest electricity retailer in Australia, with operations in every state and the Australian Capital Territory. We are also licensed to sell electricity in several markets in the United States. We have equity interests in 497 megawatts of low emission, gas-fired peaking power stations in Western Australia and Queensland, both of which we operate.

The Commission's proposed policy position

We welcome the Commission's proposed policy position that ERM Power's rule change request warrants a change to the Rules.

The Commission's proposed amendments have the potential to deliver the majority of benefits that ERM Power hoped to achieve through its rule change request. However, these high level policy positions could also be interpreted in a way that would greatly restrict access to these benefits. The extent to which benefits are delivered will depend on how the Commission drafts the relevant Rules, the level of detail to be included in the Rules compared to the procedures, and how much guidance the Commission chooses to give AEMO in procedure development. Our submission therefore suggests alternative wording to provide clearer direction for rule drafting.

The role of the Rules is to establish the high level framework on which procedure and operational practises depend. The challenge with this rule change is that it inherently relies on the procedures in the sense that participants must use the existing procedural framework, as the basis of their operations, to assess how any proposed changes would work in practise. At the same time, those procedures will themselves require amendment in response to any changes to the Rules determined by the Commission.

Acknowledging that the Commission's remit is limited to the development of the Rules, it is imperative that the Commission carefully considers the operational practises that it believes are acceptable and unacceptable, and the extent to which they are currently supported by market procedures, in order to ensure that a change to the Rules can effectively deliver its intent.

When drafting its proposed rule change, we urge the Commission to ensure the draft Rules are clear, specific, and do not allow room for alternative interpretations. Differing interpretations of the current Rules ultimately led to the development of market procedures and operational practises that were later deemed inconsistent with the Rules: a situation that we would not like to see repeated.

Our submission explores the operational meaning of the Commission's proposed policy position and seeks clarification. We propose the approach that we believe would allow the realisation of maximum benefits in line with the National Electricity Objective.

We specifically explore the following issues:

1. Large customer Metering Coordinator appointment.
2. Alignment of retail transfer and meter replacement.
3. Incumbent parties operating on behalf of incoming parties.
4. Form of agreement between incumbent and incoming parties.

ERM Power's stakeholder workshop

Prior to the release of the Directions Paper, ERM Power hosted an industry-only stakeholder workshop on meter replacement processes. The aim of the workshop was to provide a forum for stakeholders to share their views, and explore whether there was an alternative meter replacement process that could broadly meet all stakeholder needs. The Commission has previously been provided with the outcomes of that workshop. We reference these workshop outcomes in our submission in the context of the Commission's proposed policy position. ERM Power's response to the Directions Paper has been influenced by a range of stakeholder views raised during that workshop.

Please contact me if you would like to discuss this submission further.

Yours sincerely,

[signed]

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METER REPLACEMENT PROCESSES DIRECTIONS PAPER

The Directions Paper outlines the Commission's proposed policy positions as to:

- clarify that an incoming retailer cannot require a metering installation to be changed at a connection point until the retail transfer is complete;
- provide that during the retail transfer period an incoming retailer can nominate parties such as the Meter Provider (MP) and Meter Data Provider (MDP) to undertake certain roles at a connection point, and that such nominated parties cannot commence these roles until the day the retail transfer is completed; and
- clarify that commercial arrangements can be entered into between incoming and incumbent parties at a connection point, so the incumbent parties can churn the meter on behalf of the incoming parties during the retail transfer period.

We first discuss the implications of the draft provision to allow a large customer to appoint its own Metering Coordinator (MC), which we believe goes some way to addressing the issues raised in ERM Power's rule change request. The remainder of our submission considers the application of the Commission's proposed policy positions in relation to small customers, and those customers who choose not to appoint their own MC.

1. Large customer Metering Coordinator appointment

In the Directions Paper, the Commission notes that a large customer may be able to affect pre-transfer meter replacement through appointing its own MC. While no further explanation of this process is included in the Directions Paper, ERM Power believes this should provide the right for a customer to appoint its MC at any time, and instruct the MC to facilitate a meter replacement at its site at any time. We request the Commission confirm whether this is its intent. If this is the intent, then this provision would appear to address the issues identified in ERM Power's rule change request for the majority of large customers.

It is then important to consider which customers may be classified as large customers for the purposes of MC appointment. The Commission's draft definition of large customer under its draft determination for the competition in metering rule change is as follows:

(a) In a participating jurisdiction where the National Energy Retail Law applies as a law of that participating jurisdiction, has the meaning given in the National Energy Retail Law.

(b) Otherwise, has the meaning given in jurisdictional electricity legislation.

We have identified one issue with this definition, and one opportunity to address issues associated with meter replacement for multi-site customers. We also suggest an alternative definition for large customer to address these.

1.1 Victoria does not define large customers

Victoria's large customers are not captured by either points (a) or (b) in the definition above. Victoria has not adopted the National Energy Retail Law, and its jurisdictional electricity legislation does not include a definition for large customers. It defines small customers as those using up to 40MWh per annum (amongst other things), but does not define a term for customers who use more than 40MWh per annum. Therefore, the draft definition of large customer above would mean that no large energy user in Victoria would have the right to appoint its own MC, and would not have the option to request meter replacement in advance of retail transfer where this is required.

1.2 Multi-site customers may opt-in to large customer arrangements

The Commission acknowledges the customer confusion and operational inefficiencies that are likely to result where a multi-site customer cannot replace the meters at its sites before the start of its retail contract. While we accept that pre-transfer meter replacement may be possible by commercial agreement under the Commission's third proposed policy position, we believe that these customers are a particular case warranting a more explicit provision.

Section 19 of the National Electricity Law (and rule 5 of the National Energy Retail Rules) allows a business customer with two or more premises to provide its consent to its retailer to aggregate the consumption at these sites. In doing so, it chooses to surrender certain small customer protections to access benefits usually available only to large customers.

This precedent for multi-site customers being treated as large customers could be extended to also provide multi-site customers with the right to appoint their own MC. If a multi-site customer chose to appoint its own MC, it would also have the option to request their MC to facilitate meter replacement in preparation for retail transfer. This would allow multi-site customers to avoid the poor customer experiences outlined in ERM Power's rule change request.

Victorian multi-site customers do not have the ability to aggregate their load under current legislation. We understand that this means that a decision to allow Victorian multi-site customers to appoint their own MC would need to be enacted through jurisdictional legislation. We suggest that the Commission drafts the large customer definition in such a way that it may refer to an equivalent provision in Victoria in the future.

1.3 Proposed large customer definition

We propose that the Commission considers amending the draft definition for large customer as follows:

Any person who:

- (a) is not a small customer; or*
- (b) is a business customer that has agreed that consumption at two or more premises are to be treated as aggregated under rule 5 of the National Energy Retail Rules or any equivalent provision in Victoria.*

We expect that by adopting this definition, the majority of customers who we know to currently value the ability to replace a meter in preparation for a retail transfer (large customers and multi-site customers) will be able to do so.

2. Alignment of retail transfer and meter replacement

One of the key issues highlighted in ERM Power's rule change process is that it is unclear whether the Rules obligations are intended to refer to a status according to MSATS, or according to operations. We explained that it is inevitable that the in-field and MSATS realities will regularly be misaligned because some changes must be recorded in MSATS after they have occurred operationally, and other changes are designed to be retrospective. Unfortunately, the Directions Paper does not address this issue, either in a broad sense, or in relation to the specific issue of the timing of meter replacement relative to retail transfer.

The Commission's first proposed policy position is that an incoming retailer cannot require a metering installation to be changed at a connection point until the retail transfer is complete. In the following

statement from page 17 of the Directions Paper, the Commission aims to provide greater clarity on the potential timings that it intends to allow:

The Commission notes that often the final meter read on behalf of the incumbent retailer, and the retail transfer occur on the same day. If the incoming metering parties are able to commence their roles on the day of the retail transfer, then it may be possible to align the meter churn day with the final meter read for the old meter.

We understand this statement to mean that under the Commission's proposed policy it may be possible to align the meter replacement date with the retail transfer date. We describe below two possible approaches to achieving this outcome, using a retail transfer completion date of the 1st of March as an example.

1. A retail transfer is initiated, indicating an intended change of metering roles. The transfer completes on the 1st of March. The incoming metering parties are able to take the final read of the old meter and replace the meter on the 1st of March, once their roles are effective in MSATS. MSATS may be updated on the 2nd or 3rd of March to reflect this information.
2. A retail transfer is initiated, indicating an intended change of metering roles. Assuming there are no objections (or all are resolved) the incoming metering parties replace the meter on the 1st of March. MSATS is then updated (on the 2nd or 3rd of March) to indicate that the retail transfer also completed on the 1st of March.

These two approaches may appear very similar; however, they have distinct implications for the parties involved.

The first approach describes a meter replacement that is dependent on a fixed retail transfer date. This would require metering parties to have sufficient capacity available to schedule and perform meter replacements at short notice, once the transfer date is certain. It does not provide the flexibility generally required to schedule outages with customers, arrange resources, or manage access or other site issues. While in some circumstances it may be possible to schedule and perform a meter replacement on the day a retail transfer completes, in our experience it cannot be achieved at the volumes required during peak times in particular (January and July). Although it is large customers who represent the greatest demand for meter replacement during peak times, this will nonetheless create resourcing constraints that would impact small customers around these times.

In the second approach above, the retail transfer date is dependent on the meter replacement date. This approach recognises that setting a meter replacement date can be more challenging than setting a retail transfer date, and therefore should be given precedence. ERM Power previously described this approach in our submission to the Consultation Paper and outlined the associated benefits of a Rules framework allowing this existing practise to continue.

This approach was also specifically discussed by stakeholders at ERM Power's workshop, and appeared to have the potential to fairly balance stakeholder needs. It would provide metering parties with greater scheduling flexibility. At the same time, it addresses distribution businesses' concerns relating to clear rights and liabilities of metering parties in the field compared to MSATS by aligning role effective dates with the meter replacement and transfer dates. It would also support retailers' need to have metering in place to enable their products and services from the transfer date.

ERM Power believes there would be significant benefit (for small customers particularly) in ensuring that the Rules allow the continuation of this practise. We therefore recommend the Commission's draft determination reflects an amended policy position such as to:

Clarify that the date of meter replacement cannot precede the effective date of retail transfer in market systems

We urge the Commission to be very specific in the drafting of a proposed rule change, to ensure that procedures can be developed that clearly deliver the Commission's intent.

3. Incumbent parties operating on behalf of incoming parties

The Commission's third proposed policy position is that commercial arrangements can be entered into between incoming and incumbent parties at a connection point, so the incumbent parties can churn the meter on behalf of the incoming parties during the retail transfer period. The concept of the incumbent metering parties replacing a meter *on behalf of* the incoming metering parties requires clarification, and our correspondence with the Commission on its intent for this indicates that there may be two distinct interpretations.

A literal interpretation is that the incumbent MC instructs the incumbent MP to physically install the incoming MP's meter on their behalf. The incumbent MP and MDP operate as if this were their meter, until the retail transfer completes and the incoming parties become effective at the site. This interpretation has clear flaws. First, the incoming metering parties are unlikely to be comfortable with being liable for a metering installation (once their roles become effective) which has been installed by another party. Even if they were, some metering parties would not be appropriately accredited to install type 4 meters (i.e. the regulated metering parties associated with distribution businesses). Further, it is unlikely that one metering party would have the systems capability to communicate with another party's meter.

The second interpretation is that the incumbent MC engages the incoming MP and MDP to install and operate the new meter prior to the transfer date. However the incumbent MP and MDP would remain responsible for the site in MSATS until the transfer is complete and the new metering roles become effective.

ERM Power believes in the principle that Rules liabilities should be placed on the party who is operating in a role at a point in time, regardless of whether MSATS is yet to be updated to reflect this. While this interpretation of the Commission's third policy position compromises this principle, we consider that this is a worthwhile concession if it improves the options available to customers to achieve the metering outcomes they require.

We therefore suggest the Commission consider clarifying its third proposed policy position in line with this interpretation. In particular, it is unnecessary to specify that "incumbent parties can churn the meter on behalf of the incoming parties". As the Commission's second proposed policy position specifies that the incoming metering parties cannot be effective until the retail transfer date, it is clear that the incumbent metering parties will be attributed to the metering roles in MSATS before that date.

We also believe that reference to the "retail transfer period" is unclear. It is our expectation that this is intended to refer to a period prior to the effective date of a retail transfer (with the maximum length of that period to be specified in procedures).

We recommend that the Commission's draft determination reflects an amended policy position that the metering installation may be replaced prior to the effective date of a retail transfer. Suggested wording for this amended position is provided below.

4. Form of arrangement between incumbent and incoming parties

Critical to the likelihood of establishing an arrangement under the third proposed policy position – and therefore whether having this option can deliver any benefit – is the form that the agreement must take. The term “commercial arrangement” may give the impression that an arrangement would require legal contract drafting and execution, a process that could be resource intensive for parties. We expect that such an agreement would need to deliver material benefits to both parties to justify undertaking such a task. However, by entering into such an arrangement, the incumbent parties are not receiving a material benefit; they are losing a customer.

Benefits associated with an arrangement for early meter replacement predominantly accrue to the incoming parties, and the customer (who receives a smoother transition and the benefits of competition). The only benefits realised by the incumbent parties is that entering into such an arrangement may provide grounds for the incoming parties to reciprocate in the future. While this benefit has encouraged metering parties to cooperate in the past, it may not be sufficient to justify the drafting and execution of a formal contract.

In ERM Power’s submission to the Consultation Paper on this issue, we outlined our view that the existing objection provisions in market procedures provide a transparent and efficient agreement process between incumbent and incoming parties. This process ensures that all relevant parties are notified of the proposed change, and have the right to oppose that change for a range of valid reasons. It does not allow incumbent parties to actively frustrate competition.

This view was also discussed at ERM Power’s industry workshop. One of the guiding principles for a new meter replacement process that was developed was that:

Anything can happen if all parties agree. Choosing not to object to a change request would constitute the agreement of that party to allow the action to proceed (subject to this being specified in procedures and supported by the NER).

While it is acknowledged that participants were not in a position to confirm their businesses’ formal view on this during the workshop, there were no dissenting views. However, it was also clear that stakeholders sought for the regulatory framework to more explicitly provide for this outcome.

We recommend the Commission’s draft determination reflects an amended policy position to:

Clarify that the metering installation may be replaced prior to the effective date of a retail transfer, where this is not opposed by the incumbent parties according to the MSATS procedures.