11 March 2014

Mr John Pierce
Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

Dear Mr Pierce

Supplementary paper: Regulatory Framework for open access and common communication standards review (EMO 0028)

ENA welcomes the opportunity to make a submission to the Supplementary paper on the regulatory framework for AEMC review on the framework for open access and common communication standards.

As advised in previous correspondence to the AEMC, ENA supports a metering framework which:

- Maintains current metering-enabled services and efficiently leverages existing investments
- Enables a transition to cost reflective network tariffs as quickly as practicable
- Benefits customers through economic achievement of future network operational benefits
- Enables a competitive, open and fair market for demand side services, and
- Facilitates broader adoption of smart meters while minimising cross-subsidies and any associated price impact on customers.

ENA remains concerned that this review relating to technical issues and standards is progressing in advance of consideration of the package of reforms resulting from the *Power of Choice* review, including the draft rule change to introduce metering contestability. It is significant that fundamental issues raised in the supplementary paper, including the extent of competition and the need for access regulation, are being prejudged by the AEMC before the contestability framework is developed.

ENA considers that AEMC should revise its current process in order to achieve an integrated approach to the current open access and common communication standards review and the related SCER rule changes, including the contestable metering services rule change.

ENA's detailed submission in response to the issues raised in the AEMC supplementary paper is attached. I would be pleased to discuss this review and these broader issues with you at any time and can be contacted at the ENA offices on (02) 6272 1555.

Yours sincerely

John Bradley

Chief Executive Officer
Energy Networks Association

energy networks association

ENA SUBMISSION TO AEMC SUPPLEMENTARY PAPER - REGULATORY FRAMEWORK

Framework for open access and common communication standards

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INTRODUCTION

ENERGY NETWORKS ASSOCIATION

The Energy Networks Association (ENA) is the national industry association representing the businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses provide energy to virtually every household and business in Australia. ENA members own assets valued at over $100 billion in energy network infrastructure.

This submission by the ENA is in response to the Australian Energy Market Commission's (AEMC) *Supplementary paper – Regulatory Framework* for the review on the framework for open access and common communication standards.

ENA OVERVIEW OF ISSUES

On 24 February 2014, AEMC released a *Supplementary Paper* on the regulatory framework for open access and common communication standards.

ENA appreciates the opportunity provided by the AEMC to comment on the proposed regulatory framework, but considers that a timescale of two weeks for a response to the *Supplementary Paper* is challenging for all parties. ENA also reiterates its view that the finalisation of this review into technical standards is premature and should await consideration by AEMC of the draft rule change to introduce the metering contestability framework, which will consider the roles, responsibilities and obligations relating to the provision and operation of meters and metering related services.

It is significant that fundamental issues raised in the *Supplementary Paper*, including the extent of competition and the need for access regulation, are being prejudged by the AEMC before the contestability framework is developed. This is demonstrated by the fact that the *Supplementary Paper* proposes a competition review after the contestability framework is in place and the market has matured.

In our previous response to the AEMC draft report, ENA advised our views on the implications of the open access and common standards review on delivery of network services. The ENA response to the draft report noted that:

"There has been insufficient recognition of the need for the metering framework to foster network-level outcomes which are important to customers including safety, greater access to power quality and outage information; and improved outcomes for reliability of supply."[1]

Regarding the specific issues covered in the *Supplementary Paper*, ENA submits that:

- In its earlier submission, the ENA emphasised that it was inappropriate for the Open Access and Common Communication Standards review to seek to pre-empt the forthcoming consultation on the contestable metering framework rule change. ENA's view is reinforced by our consideration of the *Supplementary Paper*, in which the AEMC proposes to determine the merits of access regulation in a contestability framework it has not yet defined.

- The AEMC's *Supplementary Paper* itself highlights the risk relating to the monopoly Metering Coordinator potentially frustrating access to smart meter services by other parties;

- If access to smart meters is not regulated and the AEMC instead relies on metering customers being able to bypass an inefficient Metering Coordinator, it will be essential that the framework unequivocally supports alternative service delivery to enable cost effective and competitive services to customers. This includes ensuring that Network Service Providers are able to install and retain network devices; and

- The *Supplementary Paper* does not recognise, or preserve, the benefits currently provided to consumers through existing network devices. It discounts extensive network services already available to consumers. Inappropriately constructed frameworks could put at risk significant network controlled load and current services.

[1] ENA response to the AEMC draft report: Framework for open access and common communication standards review, 29 January 2014. P. 8

ACCESS

This section provides further discussion of ENA views on the AEMC's proposed approach to issues relating to access.

AEMC'S PROPOSED APPROACH

ENA notes that the *Supplementary Paper* provided by AEMC concludes as follows:

On whether regulation is required for access to smart meter functionality, our draft finding is that:

- *the service that provides access to smart meter functionality, whether provided by independent third-parties, retailers or network businesses should be given the opportunity to develop free of access regulation; and*
- *it is prudent for a competition review to be undertaken at an appropriate point in time to reconsider these issues once a metering and data contestability framework is in place and the market has matured.*

On whether network businesses should have access to a defined level of 'basic' smart meter functions free of charge, our draft finding is that:

- *network businesses should negotiate and pay for access to smart meter functionality on a commercial basis, in the same way as other market participants. This approach places commercial incentives on network businesses to negotiate a level of access to the number of smart meters and types of services available that is economically efficient.*[2]

AEMC notes that their approach assumes that a competitive framework for the provision of metering services is in place, in line with the recommendations of their Power of Choice review[3]. This assumption is despite the fact that the rule change proposal, and the associated gathering and consideration of stakeholder input, to effect these changes has yet to commence.

AEMC states that under competitive arrangements, market forces should be allowed to operate without any regulatory intervention unless there is a monopoly service provider or if the market exhibited substantial inefficiencies[4].

In considering the nature of services to be provided, the AEMC concludes that (with the exception of Victoria, which is considered separately) most networks currently have limited capacity to manage network services as their meters are restricted to a metrology only function. They note that advanced meters can however perform a greater range of activities including:

- Remote acquisition of interval metrology data
- Real time loss of supply
- Real time quality of supply monitoring
- Direct load control and
- Remote connection disconnection.[5]

AEMC notes that if services were commercially attractive and prices largely reflected efficient costs, then consumers would benefit from competition.

AEMC notes the potential for service providers to frustrate access to smart meter services for other parties, especially where the service provider is also competing to provide services within the market.

AEMC concludes that as the metering contestability framework has not yet been developed, the market for services for managing access to smart meter functionality should be given the opportunity to develop free of regulation in the first instance, with a competition review to be undertaken at an appropriate time.

ENA'S VIEW

Before considering these issues, ENA reiterates our commitment to a metering framework which:

- Maintains current metering-enabled services and efficiently leverages existing sunk investments
- Enables a transition to cost reflective network tariffs as quickly as practicable
- Benefits customers through economic achievement of future network operational benefits
- Enables a competitive, open and fair market for demand side services, and
- Facilitates broader adoption of smart meters while minimising cross-subsidies and any associated price impact on customers.

[2] AEMC *Supplementary report- Regulatory framework: Framework for open access and common communication standards,* 24 February 2014, pp.3-4
[3] Ibid, p.4
[4] Ibid, p. 5
[5] Ibid, p.7-8

Key aspects of the AEMC proposal which are addressed in the balance of this submission are:

- Pre-Empting the Contestability Rule Change;
- The Need for Access Regulation;
- Effective competition;
- Coordination of Power of Choice reviews
- Services provided by meters;
- Network services; and
- Application to Victoria.

Pre-Empting Contestability Rule Change

In its earlier submission, the ENA emphasised that it was inappropriate for the Open Access and Common Communication Standards review to seek to pre-empt the forthcoming consultation on the contestable metering framework rule change. ENA's view is reinforced by our consideration of the *Supplementary Paper*, in which the AEMC proposes to determine the merits of access regulation in a contestability framework it has not yet defined.

The *Supplementary Paper* effectively acknowledges the Recommendation is premature in advance of the contestability framework rule change, stating:

"Given the metering contestability rule change request is to be considered separately under the rule change process, an analysis of likely market structures and competitive outcomes is necessarily based on a range of hypothetical scenarios." [6]

The AEMC's *Supplementary Paper* provides no rigorous evaluation of the need for regulation and it cannot reasonably conclude access regulation is not required in a contestability framework which is not yet defined.

Need for Access Regulation

The *Supplementary Paper* itself highlights the likely need for regulation of access to smart meter services provided by the monopoly Metering Coordinator (MC). Far from presenting evidence demonstrating that the MC will not exert market power resulting in inefficient charges or distortion of downstream markets, the *Paper* identifies the real potential for this to occur.

The *Supplementary Paper* itself identifies the following issues:

- The MC will be a 'gatekeeper' and would play a central role in whether the market for smart meter enabled services would be workably competitive.
- *"There appear to be incentives for retailers to take on the role of the MC, as this would enable them to frustrate their competitor's access to the functions of smart meters offered to rival services."* [7]
- Where the Retailer contracts the MC, *"…it has an incentive to argue for a type of exclusivity agreement with the MC whereby the retailer receives more favourable access than its competitors"* and "… *the retailer may succeed in hindering the development of competition in energy services by frustrating access to a smart meter."*
- Firms faced with an MC seeking to frustrate access *"…may incur costs by bypassing the smart meter to provide these services. In this respect we would be concerned that a reduction in competitive access to smart meters may restrict the ability of firms to offer innovative and competitively priced energy services."* [8]

Having identified these and other risks, the *Supplementary Paper* does not address them, either in qualitative or quantitative terms, or provide an indication of how they may be mitigated. It is therefore unclear how the AEMC can conclude access regulation is not required.

Additionally, in some cases the *Paper* is directly inconsistent on critical issues. For instance, the Recommendation at 2.4.4 is premised on a statement that:

"Smart meter functions that relate to network management are of limited use to other participants. Therefore it is unlikely that retailers, third-party energy service providers or other MCs that participate in the market ***would have a strong incentive to frustrate the access of DNSPs for strategic reasons*** [emphasis added]*."* [9]

This appears to be in direct conflict with the *Paper's* analysis at 2.3.1 which notes a retailer would have an incentive to frustrate access due to its competing position *"… the retailer may have an incentive to frustrate access to the smart meter in order to make its [DSP] products appear more competitive to the consumer."* [10]

[6] Ibid, p.10

[7] Ibid, p.13
[8] Ibid, p. 17
[9] Ibid, p. 24
[10] Ibid, p.12

For the above reasons, the AEMC Recommendation that access regulation is not required does not follow logically from the *Supplementary Paper's* analysis.

Effective competition

In considering competitive pressures supporting commercial negotiations, AEMC appears to rely upon:

- Competitive pressure between metering providers relating to ease of customer switching;
- Ability of networks to by-pass the meter for service delivery; and
- The financial desirability to the meter provider of engaging a network to support its business case.

If the AEMC adopts the *Supplementary Paper* recommendation that access regulation is not required, it will be essential that the regulatory framework unequivocally supports alternative service delivery. This includes ensuring that Network Service Providers are able to install and retain the necessary network devices.

ENA notes the desire of network businesses to be able to access reliable and cost-effective services from suppliers. However network businesses must retain the option to secure delivery of network services from their own meters and devices to maximise competitive alternatives and reduce the risk posed by the AEMC model to cost-effective service delivery for customers.

Coordination of Power of Choice reviews

As noted earlier, ENA believes that the review of open access and common communication standards should not be finalised before consideration of the rule change for contestability in metering and related services.

Assuming that the contestable metering review will take several years from initiation to completion, it would be appropriate to delay the decision to apply a regulatory framework for access. Based on the information currently available from the AEMC, the ENA considers access regulation of smart meter services is required at the outset of the introduction of the contestability framework. However, it would be appropriate to undertake a competition review of the kind proposed by the AEMC at an appropriate point in time once the market has matured. Timing of such a review should remain under consideration during the process of transition and implementation of the contestability framework.

Services provided by meters

In considering the way forward, the ENA assessment is focussed upon metering for residential and small businesses customers[11]. In this context, ENA considers that the analysis of options needs to take into account the three key applications of meter functionality, these being:

- *Metrology*: measuring electrical energy to support market settlement and billing functions
- *Customer products and services*: this covers current services (controlling customers' load for various purposes; customer information on energy use; disconnection/reconnection) and potential new and innovative services.
- *Network control and management services*: including supporting reliability, outage recovery, load management to defer network augmentation, and (with smart meters) enabling intelligent networks

This range of services identified above may be delivered by different modes: for example, in some instances metrology services may be delivered by meters and other non-metrology services delivered by other devices, or all services may be established through a smart meter, which may be a network meter.

It will be important to ensure that the range of potential services available from meters and other devices is not inadvertently inhibited or limited by constraint on networks from providing some services from their own devices, if this is the most cost effective delivery method in the interests of customers. This will include potential retention of a network meter for network related services even where it is no longer the metrology meter.

Network services

AEMC's review of current metering operations by networks appears to conclude that networks do not currently operate services such as those enabled by smart meters and hence retailers and consumers do not benefit from energy services which may be enabled by smart metering.

This analysis appears to overlook extensive demand side participation (DSP) and load control services currently operated by networks, which may or may not be provided via their metering services. Additional network services

[11] For clarity, the paper does not address metering for Commercial and Industrial customers but notes the difference definitions of 'small' customer load between jurisdictions

currently being enabled by smart meters by some network businesses include real time outage management, power quality monitoring and service connection safety alerts.

In turn, the analysis risks under-valuing the benefit to both networks and consumers of load management services which currently operate to restrict network augmentation, such as the extensive off-peak hot water services in NSW, Queensland and South Australia and the air-conditioning cycling services in Queensland.

Inappropriately constructed frameworks could put at risk significant network controlled load and current services.

AEMC should ensure that all reviews relating to the Power of Choice implementations, including the open access and common communication standards review, appreciate the benefits to customers of the legacy systems that have been installed by networks and ensure that these are not inadvertently placed at risk.

Application to Victoria

ENA notes and strongly endorses the recognition by AEMC that consideration of appropriate integrated and transitional arrangements for any contestability framework for metering will be needed for Victoria, recognising the roll out of smart meters that has taken place since 2009. It is essential that customers are able to benefit from the extensive investments that have been undertaken in smart metering and smart metering enabled services in Victoria.