

24 August 2009

Mr Harry Koller
Secretariat
National Stakeholder Steering Committee

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Dear Harry

NSSC – Resolution on Policy Issues Consultation

The ERAA welcomes this opportunity to make a supplementary submission to the Secretariat's Policy Issues Consultation paper. The views expressed in this supplementary response are endorsed by ERAA members and we would welcome further discussion on these with the Secretariat as appropriate.

In this submission, the ERAA provides feedback on the matters described in sections 4.2, 4.3 and 4.4 of the "v0.6" policy paper. We also make some comments below on the overarching policy question that influences the development of a competitive market in SMI.

Overall Policy Objectives

The ERAA recognises the difficulty in achieving consensus among stakeholder groups on some of the policy issues, however; retailers generally support the development of competitive outcomes in the area of Smart Metering Infrastructure (SMI) as they do in other parts of the energy supply chain.

This matter has prompted significant debate over the last few years. The ERAA believes that the factual and counterfactual arguments being put forward to assess the merits of retaining exclusivity following a mandated roll out of SMI, obscures the long term goal that the energy supply industry should be working towards; maintaining and enhancing competitive outcomes wherever possible.

The ERAA would contend therefore that the policy focus should be on ensuring a regulatory regime that supports the goal of competitive outcomes in the electricity market. The presumption that SMI services are by default monopolistic in nature is not borne out in reality, nor is it the long term least cost solution or consistent with the Competition Principles Agreement. While an accelerated mandated roll out might be best achieved by assigning exclusivity to one party, this situation need not continue once a roll out is complete.

ERAA strongly believes that any proposed SMI regulatory arrangement should achieve the following policy objective:

Maximise the potential for competitive outcomes to arise in the provision and delivery of all services and products enabled by SMI

Comments on issues identified in the paper

In this re- submission, the ERAA responds to the matters raised in sections 4.2, 4.3 and 4.4 of the issues paper below.

1. What SMIS might retailers wish to enable?

There are a range of services that retailers may wish to enable or access once SMI is deployed. For example:

- Access to the HAN or enabling an IHD sold to a customer; and
- Load control of certain appliances via communication links installed in the meter (for example, ZigBee).

Retailers will develop new products and innovate based on their understanding of the capability of the SMI and their ability to cost effectively negotiate non-metrology services with distribution businesses or other third party service providers. The ERAA would point out that it is not possible for retailers (or any market participant for that matter) to identify all of the potential services that could be developed through utilisation of SMI.

A retailer is the provider of services to the customer in the NEM through the bundling of transmission, network, retail and energy services. The potential value that can be derived from SMI services and shared with customers would be best captured and delivered through the retailers in a competitive environment. From a policy perspective, ERAA strongly believes that there should be flexibility for a retailer to determine the set of services that would be provided, and the party (ies) (including where SMI is mandated to the LNSP) who would enable the services.

The provision of such flexibility through supporting regulatory arrangements would greatly increase the dynamics of competitive tension between retailers and the providers of SMI infrastructure and services. It would also drive innovation from retailers through the ability to structure its service and pricing offerings on network, energy and retailing services. The ERAA believes it is critical for the regulatory arrangements to facilitate the development of competition and innovation that would ultimately benefit consumers with improved service and pricing.

As discussed below, operating in such an open and competitive environment, retailers, LNSPs and SMI service providers (including LNSPs) may require a degree of industry coordination to mitigate risks associated with system performance. These may include customer services and billing, safety, reliability and security of the network. The ERAA is of the view that such regulatory arrangements may be necessary to facilitate the transformation of the electricity industry to provide customers with a wide range of choices in energy and environmental management.

The ERAA understands that the Secretariat intends to discuss the use of the HAN and switching services with various industry stakeholders. Due to the commercial nature of

these services, the ERAA does not intend to address in detail the SMIS that retailers may seek to enable following a roll out of SMI.

2. Infrastructure provision and customer service scenarios

As indicated above, the ERAA believes that policy decisions should support flexibility to the maximum possible extent. Those scenarios described on page 7 of the policy paper in relation to switching describe potential outcomes that might arise following a discretionary or mandatory deployment of SMI. The table below summarises the ERAA's views on these scenarios and other variations that may potentially emerge. The ERAA's comments are provided in the context of retailers having the opportunity to provide SMI services to those customers who under a mandate are not exclusive to LNSPs where they, the LNSP are responsible for SMI services. The ERAA further assumes that such SMI services would be provided consistent with any coordination requirements necessary to ensure efficient use of market participant systems.

Issues paper scenario	Scenario description	Comments on issues paper scenario	Potential variations or alternatives
A	Where a distributor provides SMI pursuant to a mandate, and access for a retailer to the SMI is securely possible, is the distributor exclusively responsible for switching?	No. If access to the SMI is securely possible, the merits of not providing access to other industry participants are not apparent. This will limit the benefits of a mandated roll out.	Scenarios B and C are preferable. B2B processes for the SMMS, negotiated services using the Smart Meter Management System (SMMS) or the use of open protocols to local communication devices (such as ZigBee) would allow retailer services to be offered.
B	Where a distributor provides SMI pursuant to a mandate, and provides switching services to retailers under B2B procedures and processes, should the distributor have any residual control over switching? If so, in what circumstances?	No. Some residual control over load management services may be legitimately required by distributors (for example, to address systems security), however the basis for and nature of any residual control would need to be demonstrated and transparently managed.	The scope of switching services to distributors under a mandated roll out where access through the SMMS or at a local point is provided to assist with network management and planning should be agreed by industry inclusive of a framework outlining agreed scenarios under which such control would be available.
C	Where a distributor provides SMI pursuant to a mandate, and switching services are securely available to retailers under a Home Area Network capability, should the distributor have any residual control over switching? If so, in what circumstances?	As above.	As above.

D	Where a distributor provides SMI not pursuant to a mandate but as a discretionary matter, is the distributor or retailer responsible for switching? If so in what circumstances?	Where the distributor has deployed SMI on a discretionary basis, the distributor would be responsible for switching for the purpose of network operation (for example, systems security). Load management for any other purpose should be exclusively within the control of the retailer; for instance via retail tariffs.	Under this scenario, there would be nothing limiting a distributor offering switching functionality to retailers. The ERAA presumes such a scenario would be unregulated from a cost-recovery perspective, since the deployment is discretionary and not part of any mandate. In this commercial setting therefore, the provision of additional services will assist the distributor to fund the discretionary roll out. However, the ERAA believes that some form of national standard and requirement would be required to maintain consistency with systems and processes that will be imposed on mandated SMI deployment.
E	Where a retailer provides SMI, is the distributor or the retailer responsible for switching? [This might occur in a post mandate or in a non-mandate jurisdiction].	The retailer would be responsible for switching subject to industry coordination requirements. (For example, a dedicated circuit was required to maintain load control of hot water.	This scenario exists at present. Where a distributor sought switching services (e.g. for controlled loads) such services (or other services for example outage detection) could be enabled by seeking such services from the retailer or its service provider. It is also possible that the service provider of SMI is the distributor itself and any additional services sought could be negotiated with the retailer or retailers responsible in the market for SMI in its network area.

3. *Current regulatory treatment*

There are examples where small customers at present receive additional SMI related functions controlled by market participants, which are in excess of basic meter services. The ERAA considers that additional services offered to customers should be made on the basis of commercial agreement between the service provider (the distributor and/or retailer) and the customers themselves.

Customers would consent to the nature and cost of any incremental service and are afforded the protection of existing retail and distribution codes and fair trading provisions.

The ERAA does not believe additional regulation of the services enabled by SMI is necessary (the chief exception being safety regulation in the case of remote de and re energisation).

4. *Merits of proposed responsibilities*

Responsibilities during a mandated and exclusive roll out

Under a mandated regional or jurisdictional roll out of SMI where the distributor is responsible for the deployment of infrastructure, data capture services, quality of supply measurement and (generally) meter maintenance functions would be the responsibility of the distributor during any period of exclusivity. While the LNSP is mandated to provide energy measurement, there is potential for this task to be undertaken by a third party during a mandated roll out period to allow both metrology and non-metrology to be provided by a single party.

The ERAA is of the view that there is merit to support the provision of non-metrology services related to customer service functions to remain a retailer responsibility. The LNSP would continue to provide the mandated infrastructure to retailers. The ERAA recognises that there are some non-metrology functions that are important to LNSPs for network security and safety reasons. The ERAA suggests that the joint use of the SMI infrastructure or services for such functions should be subject to an industry coordination agreement. . This arrangement would enable a contestable provision of non-metrology services that could be offered by retailers through:

- A distributor under B2B services;
- A distributor via a negotiated agreement; or
- Third parties accessing local communication functionality (ZigBee).

Responsibilities following the expiry of a mandated period

Following the end of a roll out and any period of exclusivity, any accredited party could be responsible for SMIS infrastructure and service delivery. In this environment, distributors or other service providers could deliver SMIS through the existing SMMS, their own SMMS or a number of alternatives.

Exploitation of open contestability would be greatly enhanced, and more cost effective, if the proposed contestability for non-metrology services during the mandated period is already embedded in the market and business systems and processes and regulatory provisions.

As discussed in the next section, ERAA is firmly of the view that the national regulatory framework should feature full contestability as a default position with transitional provisions in the Rules for a fixed period of exclusive infrastructure rollout and data provision where a jurisdictional mandate is in place.

5. Arguments for and against proposed responsibilities

As discussed at the beginning of this submission, regardless of the costs and benefits of exclusive or contestable SMI provision or whether a mandated roll out is specified or otherwise, the policy objective in relation to SMI should be to maximise the potential for competitive outcomes to arise in the delivery of services and products enabled by SMI.

In jurisdictions where no mandate is in place (nor intended), questions around responsibilities should not arise, since all SMI is provided on a commercial basis and customers are free to select service providers that meet their needs. However, in the interest of preserving a nationally consistent approach to the provision of SMI, enforcement of some sort of national SMI functions, performance and processes should be considered for non-mandated rollout of SMI. Among other administrative cost savings, where there is churn, the incoming retailer may want to minimise potential switching costs by requesting the meter to stay on the wall subject to an industry coordination requirement or agreement.

Where a mandate (and exclusivity granted to a single set of market participants) is in place, at the conclusion of the roll out, a return to competitive SMI provision and associated services should be firmly committed to. This will influence those assigned with exclusive responsibility for the initial deployment to implement SMI that will:

- Be flexible enough to compete with new service providers when exclusivity concludes;
- Maintain costs at a level that will withstand competitive pressure in the future;
- Encourage the development of service levels sought by customers of SMI (including end-use customers through retailers); and
- Create a commercial environment where incremental or additional services desired by retailers can be negotiated and implemented in advance of the conclusion of the mandate period.

6. Legal consequences and liability

Responsibility for data capture and load management is governed by existing regulation (the NER, Metrology Procedures, Distribution Code etc.) in the case of a mandated roll out.

Non-metrology services, to the extent that safety is not compromised, can be governed through commercial agreement between service providers (retailers or distributors) and customers with customer consent to the application of services offered. It is envisaged that oversight of de energisation and re energisation will be managed as required through existing energy safety legislation and the National Energy Consumer Framework (NECF). There is merit, however, that these agreements or regulatory instruments are consistent with SMI industry coordination requirements to maintain system integrity for the provision and delivery of non-metrology services. (An example could be Chapter 3 of NER that sets out

the operating rules for participation in NEM for NSPs, Generators, Retailers and Load to ensure system efficiency and security).

Currently, there is no regulatory framework for switching outside of traditional load management functions, yet such technology has been trialled in a number of jurisdictions, implemented with some larger customers that involve agreements with customers, NSPs and the retailer.

In short, the ERAA does not believe that the liabilities associated with post mandate SMI competition are insurmountable, and obligations on Responsible Persons and their accredited service providers would extend to other market segments and operate as they do today. The ERAA acknowledges that further work may be required to ensure that distributors and retailers and SMI service providers are not subject to unintended risk or consequences that may arise from the implementation of a modified regulatory regime.

Section 4.3 Mandated Roll Out

The ERAA makes additional comments in this re-submission on material added to the consultation paper by the Secretariat (in version 0.6).

*Issue 1. How should the MCE decision for a mandated roll out be given effect in the NER? Is distributor exclusivity for SMI the default position with a positive decision to move to contestability required or is contestability the default position with exclusivity for SMI to be regarded as a time limited 'derogation'?*¹

The Secretariat has asked for specific comment on this issue. The ERAA believes that the default position is contestability and competition in relation to SMI with exclusivity restricted for a certain period by derogation. Since contestable (type 4) metering services are already provided in the NEM, it is not the case that the default position is exclusive provision of metering services, even if this is the common arrangement at present.

In Victoria, the changes required to support exclusivity were achieved through a jurisdictional derogation to the NER. Since exclusivity is likely to be the exception rather than the rule in the long term, the ERAA does not believe changes to chapter 7 of the NER are necessary to support exclusivity. If exclusivity is required under a mandated roll out (which of itself may not apply to one hundred percent of small customers), an approach similar to that applied in Victoria would be preferable as there is a defined expiry of the period of exclusivity providing certainty to market participants.

*Issue 2. Is contestability or exclusivity to be the market structure post-mandate?*²

The ERAA supports the application of the Competition Principles Agreement [clause 5(1)] in resolving this issue. However, the ERAA notes that the exclusivity currently applies only to type 5-7 meters in the NEM, again by derogation. Therefore, while technology solutions may impact upon the development of competition in SMI service provision following the conclusion of a period of exclusivity, the ERAA does not believe that there is merit in diluting the objective of competitive outcomes by placing conditions and caveats upon its realisation such as a review process sometime in the future.

¹ NSMP, *National Smart Metering Program- Policy Issues Consultation*, page 9

² Ibid.

In order to ensure the appropriate technologies are selected in the first place, industry participants need to be cognisant that competitive SMI provision is the state of the world most likely to maximise benefits to consumers and prepare for this environment accordingly. The ERAA does not agree with the recommendation stated at the end of section 4.3 of the consultation paper:

...the NSSC will not make recommendations for the structure of the market after the mandate. It will, instead, recommend that it should include a provision that it be the subject of review not later than two years before the exclusivity it provides for would first end.

Therefore, the ERAA believes that any recommendation to the MCE regarding market structure following a mandated or exclusive period should clearly indicate that contestability be considered the default market structure.

Section 4.4 - Discretionary Roll Out

The ERAA believes little additional regulation is required beyond current regulation where a discretionary roll out takes place. However, as identified elsewhere within this supplementary response, consideration needs to be given to:

- The need for and level of coordination required between affected market participants in the event that an LNSP or Responsible Person deploys its own SMI in absence of a mandate; and
- The merits of ensuring that any SMI deployed meets functionality and performance standards consistent with any agreed national minimum. The ERAA believes that any discretionary roll out of SMI should include functionality consistent with national minimum functionality to enhance consistency across jurisdictions. The particulars of individual business cases for a discretionary roll out is the concern of the party undertaking the roll out and any vendor selection and service level considerations will include the minimum functionalities required.

Furthermore, the ERAA believes that there is no restriction on supplying SMI to larger customers; however, it believes that any such supply would occur on a commercial basis for such customers. That is, such customers would be free to elect whether or not the functionality offered by SMI meets their requirements.

Conclusion

This supplementary response to the policy paper reinforces the ERAA's general view that the deployment of SMI should minimise the cost imposition on consumers and maximise service and innovation enabled by this technology. In the case of a mandated roll out undertaken by a single party for a defined geographic area, our view is that such a deployment proceeds with the understanding that exposure to competitive forces in the medium term is likely, the "default" structure of the market and desirable. Participants in the

market for SMI will need to develop efficient solutions to issues around roles, responsibilities, control and liability of SMI and the services it provides that will not constrain the emergence of a competition market for SMI

Again, the ERAA would welcome further discussion of the views put forward in this response as well as other matters contained in the issues paper.

Yours sincerely

A handwritten signature in black ink, appearing to read "Cameron O'Reilly". The signature is written in a cursive style with a large, stylized 'O' and 'R'.

Cameron O'Reilly
Executive Director