AUSTRALIAN ENERGY REGULATOR

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19 September 2024

Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
SYDNEY NSW 2001

Dear Ms Collyer

Re: Accelerating smart meter deployment – Directions paper

The Australian Energy Regulator (**AER**) welcomes the opportunity to provide this submission in response to the Australian Energy Market Commission's (**AEMC**) directions paper on Accelerating deployment of smart meters.

The AER supports the release of this directions paper and the proposed, additional protections aimed at strengthening the existing customer safeguards package proposed in the AEMC's draft determination.

The AER agrees with the AEMC that an accelerated smart meter deployment is beneficial to energy stakeholders in delivering a more efficient, lower-cost, and lower-emissions energy system. The proposed acceleration of smart meter deployment is crucial if the benefits of smart meters are to be realised in a timeframe that supports the energy transition and emissions reduction.

A higher penetration of smart meters can assist to defer Distribution Network Service Providers (**DNSPs**) network investment and maintenance costs by providing greater visibility to reduce peak demand growth and mitigate emerging minimum demand issues. This, in turn, will contribute to reduced costs for consumers. An accelerated deployment of effective smart meter technology is also crucial in facilitating and enabling consumers to participate in future market services.

The AER shares the concerns noted by the AEMC and other stakeholders about the negative experiences some customers have had following a smart meter installation outside of the proposed acceleration period. Currently following a smart meter upgrade, DNSPs may assign customers to a new network tariff structure, following which they will commonly be transitioned to a new retail tariff structure by their retailer. This sudden transition to a new pricing structure without adequate information and ability for consumers to respond has led to bill shock for some customers. These experiences risk the necessary social licence for the accelerated deployment.

In light of this, the AER supports the additional consumer protections the AEMC have proposed in this directions paper, specifically that:

- retailers must obtain the customer's explicit informed consent to change their retail tariff structure for three years following the smart meter deployment – i.e. the explicit informed consent period; and
- the requiring designated retailers to offer smart meter customers a flat retail tariff structure where the jurisdiction has applied this through a local instrument.

We consider these strike an appropriate balance of maintaining network pricing signals, encouraging retail innovation and ensuring customers can still meaningfully opt out and remain fully informed. We note the protections do not prevent network tariff reassignment which, in the absence of a direct relationship between the distributor and customer, can be an important price signal to retailers and incentivise them to work with their customer to help them to find ways to manage or shift their demand. This can ultimately help address future network investment challenges and to avoid significant capex increases. We provide some additional suggestions in the Attachment to further support the effectiveness of these measures.

We appreciate that the proposal may change some of the pressures currently faced by retailers. We consider that this is warranted given the importance of robust consumer protections in the accelerated deployment of smart meters. Nonetheless, we recognise there may be flowthrough impacts on retail operating costs and will monitor this through the annual Default Market Offer and retail market performance reporting processes.

The Attachment to this letter provides greater detail and discussion on these issues. It also describes the resourcing implications that the additional consumer safeguard proposed in the directions paper will have for the AER's Compliance and Enforcement functions.

The AER appreciates the continued opportunity to provide feedback on the proposed rule change to accelerate the deployment of smart meters. We are available to discuss our submission further if needed.

The AER notes a broader consideration of electricity pricing matters, including network tariffs, will occur as part of the AEMC's *Electricity pricing for a consumer-driven future* review. The AER considers some of the consumer safeguards relating to retail offers considered in this directions paper may also be important to consider more broadly as part of this upcoming review.[1] The AER welcomes continued engagement with the AEMC on topics that will be covered in the Review and are related to this proposed rule change.

Yours sincerely

[redacted]

Stephanie Jolly
Executive General Manager
Consumers, Policy and Markets
Australian Energy Regulator

Sent by email on: 19.09.2024

1 The AER has made a submission to this review in August 2024, which can be accessed on the AEMC's website here.

Attachment – Comments on the proposed enhanced consumer protections

1 Explicit Informed Consent for a change to a customer's retail tariff structure following a smart meter deployment

The AER supports the AEMC's proposal that retailers must obtain the customer's explicit informed consent to change their retail tariff structure for three years following the smart meter deployment – i.e. the explicit informed consent period. This would provide additional protection to customers from bill shock and provide them a period of certainty to better consider the benefits of moving to another retail tariff structure.

We consider this three-year period is a pragmatic balance, providing meaningful protection for affected customers whilst acknowledging that retailers will likely need to move customers away from legacy retail pricing structures at some point. We also stress that, as the AEMC's directions paper points out, the explicit informed consent period strengthens the incentives on retailers to give these customers detailed and useful information explaining how they would benefit from moving to a proposed new retail tariff structure. We acknowledge the explicit informed consent period provides customers who need it with an additional protection from potential bill shock arising from cost reflective retail tariffs. However, we note some customers may nevertheless choose to take advantage of a cost reflective retail tariff structure and can do so at any point during this period. The AER supports empowering customers and ensuring they have the choice to make an informed decision which best suits their circumstances.

The AER also supports that this proposal places a temporary hold only on retail pricing changes and not on network tariff assignment. This price signal from networks to retailers can be important to help manage future network investment challenges and to avoid significant capex increases.

While clear in the draft rules, the AER notes that the directions paper is not consistently clear that the three-year explicit consent period starts from when a customer first gets a smart meter (as opposed to when they are assigned to a new cost reflective retail network tariff). We consider being consistently clear is important because a customer may not be immediately moved to a cost-reflective network tariff, and subsequently a cost-reflective retail tariff after the smart meter deployment.

Most distributors in the National Electricity Market (currently 9 out of 13) either retain cost reflective network tariffs as opt-in only (Victorian distributors) or impose a 12-month 'lag' on moving customers to cost reflective network pricing following retailer-initiated installation of a smart meter. The lag is intended to give retailers 12 months of a customer's usage data before assigning customers to a retail tariff that best suits them. One distributor has a 12-month transitional pricing structure, to allow customers to become comfortable with cost reflective tariffs; one distributor provides a 12 month window following assignment to cost-reflective tariffs during which customers can opt-out of a cost reflective network tariff and remain on a flat network tariff; and two distributors have no lag but their modelling shows that most customers would be better off from a cost reflective structure.

Risk to retailers of mismatched network and retail tariff structures

The AEMC's directions paper notes there is a risk that retailers may increase their retail price levels when facing a cost-reflective network tariff they cannot pass directly through to that customer via their retail tariff structure. We agree with the AEMC that retailers will not uniformly be worse-off facing a cost-reflective network tariff that they cannot directly pass on to customers. Even so, where they do face a risk, the AER encourages retailers to first take this as an opportunity to innovate in managing this risk rather than simply increasing prices. Retailers can always work with their customers to explore ways to help them manage or shift their energy usage.

The AER considers two further examples of how retailers could to this without the need for further Rules prescription could be to include additional, voluntary re-engagement with the customer during the three-year period and the existing Better Offer Message which are described in the sections below. We also stress that these are just two potential examples, and we would expect retailers to explore other options.

Increased consumer engagement from retailers during the three-year explicit informed consent period

During the three-year explicit informed consent period, retailers will engage with customers at two distinct points:

- first, when seeking the customer's explicit informed consent following smart meter installation; and
- if a customer does not provide their explicit informed consent after installation, when issuing the prescribed notice to inform the customer of upcoming variations to their retail tariff structure at the end of the period.

Where a customer does not provide their explicit informed consent following smart meter installation, three-years may pass before the customer re-engages on changes to their retail tariff structure following smart meter installation. Customers may find it difficult to make an informed decision on these topics as it might not immediately be 'front of mind' for them.

To help address this, there may be value in retailers taking an opportunity to re-engage proactively with the customer about their retail tariffs at another point during the three-year explicit informed consent period. The AER does not consider this would need to be specified in the Rules but could occur at the retailer's choosing.

Such a voluntary re-engagement with their customer could logically occur twelve months after the retailer initially sought the customer's explicit informed consent. This timing allows twelve months of actual metering data to produce a historical bill estimate under the new retail tariff structure.[2] Retailers may choose to issue a notice at that time that contains, for example, similar content to that in draft subrule 2(2)(a).

This additional engagement may provide customers with additional, practical information on how a new, retail tariff structure applies to their load and any impact on their bills. This may also allow customers to make a more informed choice at the end of the three-year period.

Better Offer Message

Where retailers do choose to increase their retail prices, it is essential that customers have the information and are able to move to another offer or to another retailer. The requirements regarding a Better Offer message may play an important role in this. Where the customer is on a standard retail contract prior to the smart meter installation and has not given their

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2 Under the proposed draft rules, subrule 2(2)(f) requires retailers to include in the consumer notice issued following installation an estimate of what the small customer's historical bill would have been under the proposed new retail tariff and charges.

explicit informed consent to be moved to another retail plan, the Default Market Offer (DMO) described below will also play an important role against price rises.

The existing Better Offer message required under the AER's Better Bills Guideline may complement an additional opportunity for retailers to provide further information and seek a customer's explicit informed consent during the three-year period. This requires retailers to include a message on bills about better offers generally available to a customer than the one they are currently on. This is set out in the AER's Better Bills Guideline which requires the retailer carry out better offer checks and provide a deemed better offer message on a small customer's bill at least once every 100 days (or if a billing cycle longer than 100 days has been agreed under rule 24(2), in alignment with that billing cycle).[3]

Under the current Guideline, following the distributor reallocating a customer to a cost reflective network tariff one following a smart meter installation,[4] the retailer's better offer check could include plans with both flat and cost reflective tariff structures as both may be 'generally available' to the customer. This is particularly relevant under the AEMC's proposed enhanced protections included in this directions paper where the customer has not provided their explicit informed consent to the retailer to vary their flat retail tariff structure or where a local instrument requires the designated retailer to offer this tariff structure.

Enhancements to the required content in retailer notices

The AER is aware consumers are experiencing difficulty understanding cost-reflective retail tariffs, which are generally more complex than flat retail tariff pricing structures. It is essential that the notice retailers provide consumers before moving them to a new retail tariff structure explains these concepts in a way consumers can understand and meaningfully engage with.

To facilitate this, the AER considers the following additional requirements could be included in the draft rules, specifically sub rules 2(2) and 3(2), requiring retailers to:

- ensure the information is expressed in clear, simple and concise language; and
- present the information in a format that makes it easy for a small customer to understand.

Including these requirements may assist consumers better understand cost-reflective retail tariffs in their circumstances and support building and maintaining social licence for the accelerated deployment.

Further, the AER notes that draft subrule 2(2)(g) requires the notice must "*include information regarding how to understand, monitor and manage their electricity usage (for example, through available apps or in-home displays)*". However, the examples provided – apps and in-home displays – appear primarily to relate to consumers monitoring their usage, not understanding or managing it. The AER considers it would be beneficial to add further examples in this subrule which relate to consumers understanding their retail tariff structure and managing their electricity usage. This could include explaining how cost-reflective retail tariffs vary across the day and how consumers could make changes to their consumption to reduce costs.

2 Flat retail tariff requirement and its promotion

[3] AER, *Better Bills Guideline*, January 2023

[4] Noting this may be after the actual smart meter installation itself depending on the DNSP's policies on tariff assignment following a smart meter deployment as noted earlier.

The AER supports the proposed requirement for designated retailers to offer smart meter customers a flat retail tariff structure. Where a jurisdiction 'opts-in' to the framework and applies this rule through a local instrument, this protection provides consumers with choice to continue to access a retail tariff structure that best suits their circumstances. For example, under the proposed rule a customer will still be able to access a flat retail tariff structure from the designated retailer where they had already provided their explicit informed consent to be shifted to a cost reflective tariff structure following a smart meter deployment. This will act to ensure consumers are not discouraged from switching retailers to access the best deal for them and enable them to trial different retail tariff pricing structures whilst retaining options to access a flat retail tariff.

The importance of this is highlighted by the complaints some customers have raised previously with the AER, as has been noted in the AEMC's directions paper, and which were raised in detail in some stakeholder submissions regarding an inability to access flat retail tariffs.

To ensure consumers are aware they could still access a flat retail tariff structure in jurisdictions that have opted-in after a smart meter installation, the AER recommends amending proposed subrule 2(2) to require retailers to include this offer in the required notice to the consumer. The AER will also explore whether this could be promoted on the Energy Made Easy website.

Interaction of the flat retail tariff offer with the Default Market Offer (DMO)

The Default Market Offer (DMO) framework commenced on 1 July 2019 and is a maximum price retailers can charge electricity consumers on default contracts, known as standing offer contracts. The DMO price for each jurisdiction also acts as a 'reference price' for residential and small business market offers in that area. The AER's role is to determine the DMO price each year.

In setting this price, the AER must have regard to retailers' costs incurred to serve customers, which includes the costs of managing smart meters and regulatory compliance costs. We capture this data retrospectively and we expect any increased costs associated with these new protections to flow through over time in successive DMOs.

In addition to this, retailers may provide data on specific costs or considerations through the annual DMO determination process which includes multiple rounds of consultation. The 2025-26 DMO (applying from 1 July 2025) is the first such DMO setting process following the expected finalisation of this rule change process.

3 Resource implications for the AER

The consumer safeguard measures proposed in the directions paper and the overall framework for the accelerated deployment of smart meters set out in the AEMC's draft determination will impose resourcing requirements on the AER. These changes would also trigger changes to AER IT systems, remediation of which would require investment and resourcing.

The explicit informed consent requirement for retail tariff changes that are proposed to apply from 1 January 2025 will impact on the AER's Compliance and Enforcement functions. We are already considering proactive compliance work to provide guidance to retailers around any new obligations that may result from this rule change, including expectations around how information provided in notices to customers should be presented to ensure it is understandable and customers can engage with it. We would seek to provide this guidance as soon as possible after the AEMC makes its final determination (anticipated to be on

28 November 2024), noting the short lead time before the explicit informed consent requirements come into effect.

We will also monitor compliance with the new explicit informed consent rules and undertake work in response to any compliance issues that arise, noting that the requirement that a retailer obtain a customer's explicit informed consent before varying their tariff structure and the notice requirements attract tier 1 and tier 3 civil penalties, respectively. Where warranted, we may investigate retailer conduct further.

There will also be resourcing implications as a result of the proposed mandatory flat tariff offer for customers with smart meters. However, the exact nature and scope of these will depend on whether, and how, jurisdictions implement these obligations through local instruments. For instance, it will depend on whether jurisdictions determine which smart meter customers these requirements would apply to and the period over which the requirement will apply.

As we noted in our submission to the draft determination, the broader framework for the accelerated deployment of smart meters will have a material impact on AER resourcing. This is a result of both the transitional functions relating to Legacy Meter Replacement Plans during the acceleration period and compliance and enforcement of new obligations attracting civil penalties.