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Sunday 1 August 2010

Australian Energy Regulator
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Response to Issues Paper

AER Approach to Retail Exemptions – June 2010

Submission closing date 2nd August 2010

PUBLICATION PERMITTED

I have no worries that my name and address, telephone number or email address appearing on your website. This document may be distributed and considered by anyone.

AER WEBSITE

I have a constructive criticism about the website. As a Graphic Designer I find the site difficult to navigate and the home page cluttered with all manner of entries and detail, and it is only one page long. Perhaps relevant issues need to be grouped together, and the page made longer.

It lacks a "Home" page radio button on all subsequent pages, and the left hand menu needs to be extended and formatted more comprehensively, so as to aid navigation.

If the future role of the AER is to deal with members of the public, then perhaps a better made website is in order.

EMBEDDED NETWORKS

I am truly surprised by the actions of the AER so far in the Access arrangement including the references services and access arrangements information. In its recent:

Access arrangement - JGN's NSW gas distribution networks - 1 July 2010 – 30 June 2015

<http://www.aer.gov.au/content/index.phtml?itemId=737830>

<http://www.aer.gov.au/content/item.phtml?itemId=737909&nodeId=f87d376b58b82d8e1c7057065f6c9f92&fn=Access%20arrangement%20including%20the%20reference%20services%20agreement%20and%20access%20arrangement>

[%20information.pdf](#)

the AER has gone out of its way to pander to the hot water industry by allowing inclusion of a “hot tap point” in a Delivery Station and Delivery Point, to form part of that arrangement.

The issues paper has also gone out of its way never to include Bulk Hot Water (BHW) services regarding an Embedded Network, yet in the decision above, a whole new category of what an Embedded Network is, has now entered Energy Law.

It is no good that the AER should allow such a thing to happen, for in the abovementioned an Embedded Network is described as a system of water pipes also. Consumers will have no faith in the AER when it uses one set of words for access arrangements and another set of words in its issues paper. The AER defines that an Embedded Network are “generally” a system of electricity wires and gas pipes and nothing else.

WHAT IS ENERGY?

The Jemena arrangement is clearly another network for energy sales.

In that arrangement the term:

Customer - means an end consumer of energy. A Customer includes any end consumer of hot water in a residential unit where hot water is supplied through a centralised gas fired hot water system.

Herein the AER now has added, that a hot point is selling energy. Yet in energy law, energy is gas and electricity only, and nothing else. It is no good that the AER says one thing and then another so as to completely confound the meaning of law.

WHAT IS A NETWORK?

Energy law says a network is electricity wires or gas pipes and nothing else, yet the Jemena arrangement is clearly another network for energy sales. Indeed, in that arrangement it is called an Embedded Network also.

BHW consumers buy no form of energy at all, for a site network of water pipes imparts no energy, of Mj's, nor kWh's, nor any form calorific value

It is a plumbing network of hot water pipes serviced by a hot water meter, whether manually or remotely read. It is no good that the AER says one thing and then another so as to completely confound the meaning of law.

WHAT IS A METER?

Energy law say that a meter is a gas or electricity meter and nothing else. They have an allotted meter identifier (MIRN) so as to settle gas and electricity payments, and also trade the account amongst retailers. There is no MIRN system for hot water meters and they constitute an geographic monopoly.

This arrangement is entered into by energy distribution companies with their exclusive partners in an exclusive trading regime. Most of the energy retailers have exclusive arrangements via related party transactions, and property developers, (and not the eventual owners or their tenants) have the service contracts. Sometimes these contracts are for up to 25 years.

In the Jemena case a meter data service now includes a hot water meter.

It is obvious that the master meters that power BHW, with gas or electricity, are putting load on networks and this has seen terms like un-accounted gas (UAG) or lost gas being an unknown factor for load shedding. I can understand that remote read and monitoring will assist the industry, but this cost to upgrade a private corporations network imparts no benefit to the consumer.

Consumers gain no access to the monitoring of use, or time of use tariffs, and only get an indication of use at the end of a billing period.

The hourly or half hourly monitoring of the hot water usage, remote read hot water meters, imparts no energy use or network load information. Manual and remote read electricity and gas meters do this, and hot water meters of any type never impart any network load information.

THE NATIONAL MEASUREMENT INSTITUTE AND LAW

From 1/7/10, the exemption, by the National Measurement Institute, still remains and applies to hot water meters. This exemption refers to the pattern approval of hot water meters and is still in place in Australia because there is no testing laboratory in Australia that can test hot water meters for pattern approval.

Whilst hot water meters can be pattern approved in overseas laboratories, there is no agreement in place between Australia and the overseas laboratories. Even if such an agreement was in place, the verification of the hot water meters would still need to be done in Australia.

Furthermore, verification periods are set by State and Territory regulatory authorities. In light of the above, hot water meters are not termed illegal. They are exempt from having to be pattern approved for use.

UTILITIES

BHW and hot water meters are not utility meters. The common thinking of utilities is that they are broad scale distribution systems for potable (drinking) water, gas, electricity, telephone, cable TV, optical fibres etc;. They usually pass by on the footpath/road reserve and then enter the property of the consumer.

There is no "hot water pipeline" in existence from the footpath to the consumer, and cannot properly be seen as a utility, nor its hot water meters.

The hot water distribution network is within a building or site, and does not service other consumers beyond the property boundary.

What other "utility" does the AER contemplate to include in energy law, agreements and rules?

THE AER LAMENT

It is no good that the AER hopes, begs, and prays that jurisdictional building codes, energy licences codes and procedures, energy ombudsman schemes, tenancy laws, fair trading laws "should" be reformed to suit the many complex arrangements. If the AER has decreed that hot water is energy, then it should be included in their consideration.

I am truly horrified that AER would contemplate the inclusion of Hot Water Meters (HWM) in provisions of metering services for remote read Bulk Hot Water (BHW) sales in the recent Jemena arrangement.

These meters are not utility meters, nor are they energy meters. BHW is an excluded (ancillary, other, non-reference, non-DuOSS etc;) service proffered by Energy Distributors and their preferred sole trading partners, Energy Retailers and other non-energy Privateers.

To create another category of meter provision and then excluded BHW consumers from being considered by the AER will cause a situation where the public has no confidence in the future role of the AER.

DISCONNECTION

The ability for the billing agent/retailer to cut a consumer off by remote control is an abomination. No oversight for this is currently included in Queensland, and the Energy Ombudsman is not permitted to deal with hot water.

Current laws, rules, codes and procedures in Queensland do not mention hot water.

Who will Queenslanders turn to when this happens? Surely not the Queensland Government, for they sold 13,700 ex-Energex customers to Origin, with no form of regulation existing or even contemplated. They have aided and abetted Origin in now having the largest (and now consolidated) site monopoly in Queensland.

Who will they turn to? What guaranteed arrangements have the AER put in place to insure this does not happen?

SUPPLY CHARGES AND PRICE GOUGING – BHW METER READING FEES

All energy consumers will be paying for an excluded service that they do not have, or use, and will cause cross-subsidisation of this cost, for the industry just bundles up these charges in Supply Charges. The cost of Hot Water Meters, their maintenance and replacement, their manual and remote reading cost, and their amortisation over time by Distributors is for them and their exclusive trading partners (retailers) to pay for.

There is already price gouging for hot water meter reading fees in Queensland, with Origin charging a 50% mark-up on this service. The retailers do not read meters, and their only attributable cost is the allotment of data to a consumer's account.

What guarantee can the AER give that manual and remote reading fees, of any kind, will not be used to cross-subsidise the market?

What guarantee can the AER give that price gouging will not occur.

NETWORK LOADS

It is obvious that the master meters that power BHW, with gas and electricity, are putting load on networks and this has seen terms like un-accounted gas UAG or lost gas being an unknown factor for load shedding. I can understand that remote read and monitoring will assist the industry, but this cost to upgrade a private corporation's network imparts no benefit to the consumer.

Consumers gain no access to the monitoring of use, or time of use tariffs, and only get an indication of use at the end of a billing period. The hourly or half hourly monitoring of the hot water usage, remote read hot water meters, imparts no energy use or network load information.

Manual and remote read electricity and gas meters do this, and hot water meters of any type never impart any network load information.

ASSET VALUATION AND AMORTISATION FOR TAX RIGHT-OFF

The AER has allowed BHW meters to be included as an asset of energy entities.

Allowing meter owners to use the energy law and rules to gain a significant benefits at the cost of consumers is unfair. Hot water meters, their installation, maintenance, repair and replacement should be borne by the entities that profit from this bulk hot water billing arrangement.

It is their asset, not the consumers asset nor indeed, society's asset. It is up to the industry to pay for this section of the market, for it is not an energy meter. Remote hot water meter reading cost are 3 times more expensive that a manual read, and are are only there to aid profiteering, on an hourly basis, by retailers.

What guarantees can the AER offer to ensure that consumers are not forced to pay for a private corporation's system build cost?

AUDITOR GENERAL OF VICTORIA

The Auditor General of Victoria has lately presented a report on the introduction of smart meters in that state. It is a scathing critique of the cost and cost benefits of the roll-out of these meters. The industry has an inglorious past with smart electricity meters, and consumers have every right to question the roll-out of remote read hot water meters.

Where is the cost benefit analysis for the current and future roll-out of remote read hot water meters?

WHAT IS A METER AND WHERE IS A METER

Under energy law a meter is clearly defined as a device to measure gas or electricity and nothing else. The trouble with the AER, AEMO, AER and each jurisdictional law, code, rule and regulator, is that they do not work from the same dictionary.

Now suddenly an energy meter is also a water meter.

A supply point is also a energisation point, or a meter point, or an activation site, or a delivery point or many other words used to describe a meter.

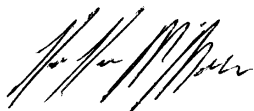
A customer is a consumer, or a user or a taker or receiver of energy, or may other descriptions.

A site is an installation or a property, or a residence, or an address, or many other things.

How are Australian's expected to truly understand these august bodies if they all speak a different language?

Thank you for reading and considering my submission and I would hope that BHW, and its meter reading fees, will be included in the Approach to Retail Exemptions.

Yours most sincerely



Kevin McMahon

Please see below for additions

BELOW IS MY SUBMISSION T THE AEMC

IT IS PROVIDED SO AS TO MAKE CLEAR THE OTHER EMBEDDED NETWORK IN THE JEMENA
ACCESS ARRANGEMENT

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Saturday 9th July 2010

Australian Energy Market Commission
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Attn: Mr Mark Tutaan or Mr Rory Campbell

**ADDITIONAL COMMENTARY TO AEMC
AEMC ref: ERC0092
PROVISION OF METERING DATA AND SERVICES AND CLARIFICATION OF
EXISTING METROLOGY
REQUIREMENTS RULE 2010
RULE CHANGE REQUEST BY AEMO (nee NEMMCO)**

Dear Australian Energy Commission

The additional material that I tried to lodge online last week immediately after my original 5-page submission dated 3 July has not appeared online. I had assumed after discussions with AEMC staff by telephone that all components of my submission had been received. I had mentioned the technical difficulties with online lodgement that I experienced.

Despite lateness, I am now sending you similar material to that which was despatched last weekend, but which possibly did not transmit. I had sent additional material to clarify certain matters. I noted that your website was down on that weekend. I now attempt to do that again by consolidating some of the documents that I had sent into a single document and ask that you publish as a late submission, as well as take the matters into account.

I understand that it is the AEMC's proposal to create a new category of data service provider who will self-regulate in taking responsibility for metering data services. I am concerned about the implications of this and especially in relation to certain arrangements in which no flow of either electricity or gas occur, but for which end-users are charged. These are the bulk hot water arrangements where energy service providers are trying to impose charges for delivery of heated water. The water is already paid for by direct contract with the water provider to the property owner.

I have already mentioned the context of the BHW matter and provide further material including my submission to the NECF2 package, also copied to the Network Policy Working Group. Please find attached my submission to the Network Policy Working Group, Ministerial Council on Energy. My submission to them appears on their website:

<http://www.ret.gov.au/Documents/mce/emr/rpwg/necf2-submissions.html>

submission Kevin McMahon.

It also appears on the Senate Economics Committee - Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010:

http://www.aph.gov.au/senate/committee/economics_ctte/tpa_consumer_law_10/submissions.htm

submission No. 47.

I have included this document so that the commission can better understand the situation in Queensland specifically, and throughout Australia generally. The attachment details the problems regarding the lack of any regulation or any avenue to complain about the Bulk Hot Water Billing arrangements in Queensland.

The AEMCs draft rule determination has accepted AEMO's proposal to have a market participant, rather than AEMO, responsible for the remote collection of metering data, to create metering data providers as a new category of service providers and to clarify many of the terms relating to metering and metering services in chapter 7 of the Rules. I object to this draft rule determination.

Meanwhile I am concerned about how meter data service providers and others can be made more, and not less accountable, as I do not believe that the AEMC fully appreciates the impact of practices on the market and on those believed to be receiving gas or electricity.

I have explored the various packages that are being offered by metering data providers and am concerned about many aspects of their operations. There are many meter data providers operating in Australia, and many offer "other" services and management for water supply, lighting, air conditioning, internet servers on site, cleaning and grounds maintenance, central heating, and of course, bulk hot water.

These bundled packages end up being charged to owners and tenants as a single charge on a bill. There is no way that hot water consumers can know the details of energy use and this type of practice offers no transparent information to the user.

The AEMC needs to be aware that it is Energy Retailers, licensed or unlicensed who are approaching property developers with a "have I got a deal for you" service. They will supply and install a mass use boiler and hot water meters and will generously take over the billing process for BHW. This happens long before an apartment buyer or their collective body corporate exists. This collusive arrangement bypasses the need for each apartment to have their own hot water system, and gives the developer a financial advantage.

The trouble with this is that owners and tenants end up paying for the infrastructure of the building they live in, and not just the cost of hot water! Once a individual owner or tenant leaves, they can never recoup that cost from the owner, and they gain no benefit from paying for this infrastructure. Landlords are not permitted to third party-line-force these services to tenants, though this does occur.

Owners are being forced to accept arrangements that were made between the developer and energy supplier, that they were never party to long before ever taking up ownership. I am aware from publicly available data that members of a body corporate of owners is suing the service provider, ServiceLink and developer to escape from this type of collusive arrangement, which has lock them into a 15 year arrangement where no gas is supplied, and where there are no price controls or access to energy ombudsman schemes.

Included in this contract is the provision of gas powered hot water being metered in kWh, and not cubic meters of gas or Mj.

Tenancy law has some remedy for services supplied by a landlord, but in this case, it is not the landlord who sends the bill. There are no contracts with eventual property owners or tenants, for the contract is between the developers and energy retailers who have other services to sell, and no one

else.

Sometimes the retailer is an energy entity, and sometimes the retailer is a service provision company. In all good conscience BHW and heated hot water sold by ANYONE should have provisions in energy law to protect consumers. When it comes to having a licence to on-sell electricity, the exemptions provisions offered to landlords and the service provision companies by the AER only entrench the injustice placed upon electricity and gas consumers and also hot water consumers.

There is no proper remedy offered regarding Embedded Networks mentioned in all the submissions, and needs to be thoroughly investigated and considered. The lack of contestability is profoundly troubling for consumers. Although bulk hot water arrangements are not strictly Embedded, they are being treated as if they are and consumers, they are being sold a product based on guess work.

I am aware that Jemena Gas Networks (NSW) Ltd has included in its Gas Access Proposal a budget that has been approved by the AER for a brand new category of non-energy meters that are to be included into access agreements as legitimate costs. Once a precedent is set on one network, all other gas distributors will approach the AER to have every water meter included into access arrangements and cost allocations.

This will see a telecommunications network that is not a dedicated network, used for remote read data metering services, which is contrary to that proposed for electricity. It seems that any remote data read information via any device is to be included in the AER's domain.

The new category of Meter Reading is called a "Non-Reference Services". They are neither a "Haulage Reference Service" nor are they a standard "Meter Data Service" for the latter relates to a "Reference Service" regarding remote read gas and electricity meters, and (now) also water meters.

The work "Network" in energy law is electricity wires and gas pipes. The AER has created a whole new meaning of this by introducing "Embedded Network". This is fine for describing a small network of wires only, say, in a caravan park, boarding house or similar situation, but to have a system of hot water pipes in a multi-story apartment building call a network is wrong in word or deed. There are no gas "Embedded Networks" for one needs a gas meter to sell gas.

This sort of phrasing, grammar and syntax, if left to fester, will cause all manner of confusion. The new and perverted Non-Reference Services relates to the remote reading of HOT WATER METERS. This is an excluded service, a non-DuOSS service, for it has nothing to do with the supply or sale of gas or electricity. They are not ENERGY METERS.

The AER access arrangement notice is via this link:

<http://www.aer.gov.au/content/index.phtml?itemId=737830>

and their decision on the access arrangement is via this link

<http://www.aer.gov.au/content/item.phtml?itemId=737909&nodeId=f87d376b58b82d8e1c7057065f6c9f92&fn=Access%20arrangement%20including%20the%20reference%20services%20agreement%20and%20access%20arrangement%20information.pdf>

The AER seems to be pandering to a sector of the market regarding excluded Bulk Hot Water services. If you type the work "hot" into the above PDF search window, you will see what I mean, (pages 61, 74 & 100). This BHW industry is a rapidly growing market, and indeed, a very profitable market that is not contestable throughout Australia. It is certainly noted by an old Energex document, that it was the only sector that had outpaced the sale of gas in Queensland and probably Australia-wide also. It is a wonderful cash cow.

Long before Smart Electricity Meters or Smart Gas Meter have properly entered the scene, the Hot Water Industry wishes to force forward their alleged "Smart" remote read Hot Water Meters, and foist the costs of an unwarranted upgrade on consumers (and not property owners who arranged BHW in the first place), long before your Commission has become aware of the AER's actions.

Once this precedence is established, it will flow through to every hot water meter owner/controller, whether they be an energy entity or not, for there are privateers offering meter reading services to Body Corporates and Property Owners that exist outside energy laws.

To have both electricity and gas markets, laws and codes supporting such a site monopoly, yet have no protections for the actual end consumer is truly abhorrent.

In my submission to you of 1st July 2010, I lament that once this is allowed through,, the true cost may be subsumed and merged into Supply Charges which never have a proper brake down on a bill, and that the many parts of the Supply Charges remain an non-transparent addition to bills

The AER also seems to be working backward, for it has broadcast an Issues Paper regarding Retail Pricing Information Guidelines. The guideline is via this link:

<http://www.aer.gov.au/content/index.phtml/itemId/734869>

and the Issues paper can be found at:

<http://www.aer.gov.au/content/item.phtml?itemId=736313&nodeId=504f3fa62bbf77316d711dd4a5d6566&fn=Issues%20paper%20-%20retail%20pricing%20information%20guidelines.pdf>

The AER seems to be very selected in where to quote from, and in the Victorian example, has gone out of its

way not to mention that BHW billing information is requirement under the Energy Retail Code in that state.

The AER seems to have all manner of laments when it comes to BHW for in its “Approach to Retail Exemptions” seen here:

<http://www.aer.gov.au/content/index.phtml/itemId/737837>

and the Issues Paper therein:

<http://www.aer.gov.au/content/item.phtml?itemId=737846&nodeId=926b4bf4f96fa91cdd3367147dbeb46e&fn=Issues%20Paper%20%20Approach%20to%20Retail%20Exemptions.pdf>

The AER seems confused and has dared to use the term “Sale of Energy” in the above PDF. Energy law says energy is electricity or gas only, and customer retail services are for the sale of electricity and gas only. The AER has ignored unfair contract terms and other generic laws to fix any unfair contract, or to gain statutory rights and actual and implied warranties to help BHW consumers.

Well, this is a bit rich, for where would tenants find the time or money to gain any form of justice from price gouging, or in the worst of cases, disconnection of their hot water. In Queensland one can seek, but no necessarily obtain, an unenforceable undertaking for each quarterly bill with an application fee of \$255. This would have to be done four times a year by many thousands of citizens, with no precedence ever set. Bills issued are based on a guess with no energy attributed to usage.

Gas cannot be embedded for both gas and electricity, as the term embedded is wrongly applied for the arrangements known as “bulk hot water arrangements”.

I dare ask the AEMC members “COULD YOU DO WITHOUT HOT WATER”? The AER offers no protections to BHW consumers, yet allow all manner of inclusions for hot water delivery in its dealings with the hot water industry. It is not good enough that this matter to be left to the jurisdictions, for no consistency is achieved, and a hotch-potch of rules and procedures and definitions are adopted. For all these reasons I do not believe the Metering Data Service Providers should be left unsupervised as solely responsible for market operations and settlements?

May I request that you bring your nominee, the AER, into line?

In conclusion, my view is that allowing meter data service providers more direct responsibility and less accountability to a single over-seeing body is a mistake that will led to even further problems within the market.

I have no objection to my personal details appearing on you website.

Yours most sincerely

Kevin McMahon

Kevin McMahon