

Draft Determination

Application for Authorisation

Amendments to the National Electricity Code – Victorian Full Retail Competition Derogations

Date: 1 December 2004

Authorisation Nos:

A90915
A90916
A90917

Commissioners

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File no: M2004/101

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Glossary

ACCC	Australian Competition and Consumer Commission
AGL	Australian Gas Light Company
Code	National Electricity Code
Centurion	Centurion Metering Technologies
DNSP	Distribution Network Service Provider
DUoS	Distribution Use of System
DOI	Department of Infrastructure (Victoria)
ESC	Essential Services Commission (Victoria)
ESCoSA	Essential Services Commission (South Australia)
EziKey	EziKey Group Pty Ltd
First tier customers	End-use customers who consume electricity provided by the local or host retailer in that geographical area
FRC	Full Retail Competition
FRMP	Financially Responsible Market Participant
IPART	Independent Pricing and Regulatory Tribunal
ICRC	Independent Competition and Regulatory Commission
LNSP	Local Network Service Provider (distributor)
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
Origin	Origin Energy Retail Limited
OTTER	Office of the Tasmanian Energy Regulator
QCA	Queensland Competition Authority
Review	Joint Jurisdictional Regulators' Review

Responsible Person	The person who has responsibility for the provision of a metering installation for a particular connection point, being either the Local Network Service Provider or the Market Participant as described in Chapter 7 of the Code
Second tier customers	End-use customers who consume electricity provided by a retailer other than by the local or host retailer in that geographical area
TPA	<i>Trade Practices Act 1974</i>
Type 4 meters	Remotely read interval meters, capable of storing half hourly consumption data, which is downloaded daily
Type 5 meters	Manually read interval meters, capable of storing half hourly electricity consumption data
Type 6 meters	Basic or accumulation meters
Type 7 meters	Unmetered supplies (eg streetlights, telephone boxes)
UED	United Energy Distribution
Victoria	Victorian Minister for Energy Industries and Resources

1. Introduction

On 6 April 2004, the ACCC received applications for derogations (Nos A90915, A90916, and A90917) to the National Electricity Code (Code). These applications were lodged by the National Electricity Code Administrator (NECA) on behalf of the Victorian Minister for Energy Industries and Resources (“Victoria” or “the Victorian Minister”). On 28 April 2004, the Victorian Minister requested that the ACCC grant authorisation to the proposed extension to the derogations on an interim basis under section 91(2) of the *Trade Practices Act 1974* (TPA). On 16 June 2004, the ACCC granted interim authorisation of the derogations, pending the ACCC’s final determination in respect of the derogations taking effect.

The stated purpose of the applications for authorisation is to extend the existing Victorian derogations contained in Chapter 9 of the Code. The existing derogations relate to metering arrangements in Chapter 7 of the Code, and grant exclusivity for the provision of metering services for certain metering installation types by distribution businesses in Victoria.

The purpose of the proposed extension is to:

1. extend Victoria’s current derogations relating to metering due to expire on 30 June 2004;¹
2. ensure the ongoing smooth operation of full retail competition (FRC) in Victoria; and
3. enable consultation on, and the development of, a co-ordinated response to the recommendations of the Joint Jurisdictional Review of Metrology Procedures (the ‘Review’).²

The proposed amendments will also make minor changes to the Code of a statute law revision nature.

Authorisation under Part VII of the TPA provides immunity from court action for certain types of market arrangements or conduct that would otherwise be in breach of Part IV of the TPA. Authorisation may be granted where the ACCC concludes that the public benefits of the arrangements or conduct would outweigh the anti-competitive detriment of such arrangements or conduct.

¹ The ACCC authorised the original applications for derogation on the condition that the monopoly provision of metering services by Victorian LNSPs under Clauses 7.2.1 and 7.2.2 of the Code would expire on 1 July 2004. Victoria has requested an extension to the derogations until 31 December 2006. However, Victoria notes that the derogations might be removed before this date if changes to Chapter 7 of the Code recommended in the *Joint Jurisdictional Review of the Metrology Procedures* report are implemented.

² The ACCC authorised changes to the Code on 1 August 2001 to facilitate full retail competition (FRC). As part of that authorisation, the ACCC mandated changes to the Code requiring Jurisdictional Regulators to conduct a review of type 5 and type 6 metering and metrology procedures by 31 December 2003 (clause 7.13(f) of the Code).

The ACCC has prepared this Draft Determination outlining its analysis and views on the applications for the extension of the existing derogations.

Chapter 2 of this Draft Determination sets out the statutory test that the ACCC must apply when assessing an application for authorisation. Chapter 3 contains an outline of the ACCC's public consultation process. Chapter 4 describes the proposed derogation in detail. The ACCC's analysis of the proposed extensions to the derogations is set out in chapter 5 and the ACCC's Draft Determination is in chapter 6.

2. Statutory test

The applications were made under sub-sections 88(1) and 88(8) of the Act.

Applications made under sub-section 88(1) of the Act are for authorisation to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act; and to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of the Act. Further sub section 88(6) provides that an authorisation made under sub-section 88(1) has effect as if it were also an authorisation in the same terms to every other person named or referred to in the application.

Applications made under sub-section 88(8) of the Act are for authorisation to engage in conduct that constitutes, or may constitute, the practice of exclusive dealing in accordance with the provisions of section 47 of the Act. Further, sub-section 88(8AA) provides that where authorisation has been granted under sub-section 88(8) and this particular conduct is expressly required or permitted under a code of practice, the authorisation applies in the same terms to all other persons named or referred to as a party or proposed party to the code. Authorisations may also apply to any corporation who becomes a party in the future.

The Act provides that the ACCC shall only grant authorisation if the applicant satisfies the relevant tests in sub-sections 90(6) and 90(8) of the Act.

Sub-section 90(6) provides that the ACCC shall grant authorisation to arrangements with the purpose or affect of substantially lessening competition or exclusive dealing arrangements (other than third line forcing) only if it is satisfied in all the circumstances that:

- the provisions of the proposed contract, arrangement or conduct would result, or be likely to result, in a benefit to the public
- that benefit would outweigh the detriment to the public constituted by any lessening of competition that would, or would be likely to result from the proposed contract, arrangements or conduct.

Sub-section 90(8) provides that the ACCC shall grant authorisation to exclusionary provisions or third line forcing arrangements only if it is satisfied in all the circumstances that the proposed provision or conduct would result, or be likely to result, in such a benefit to the public that the proposed contract, arrangement, understanding or conduct should be allowed.

In considering whether or not to grant authorisation the ACCC must consider what the position is likely to be in the future if authorisation is granted and what the future is likely to be if authorisation is not granted.

If the ACCC determines that the public benefits do not outweigh the detriment to the public constituted by any lessening of competition, or that the public benefits likely to result from the proposed conduct or arrangements are not such that the proposed conduct or arrangements should be allowed, the ACCC may refuse authorisation or grant authorisation subject to conditions.

The value of authorisation for the applicant is that it provides protection from action by the ACCC or any other party for potential breaches of certain restrictive trade provisions of the Act. It should be noted, however, that authorisation only provides exemption for the particular conduct applied for and does not provide blanket exemption from all provisions of the Act. Further, authorisation is not available for misuse of market power (section 46).

A more expansive discussion about the ACCC's authorisation process and the statutory test that the ACCC applies can be found in the *Guide to authorisations and notifications*, ACCC, November 1995.

3. Public consultation process

The ACCC has a statutory obligation under the TPA to follow a public consultation process when assessing an application for authorisation.

The ACCC received the applications for authorisation of amendments to the derogations on 6 April 2004. Notification of the applications and a request for submissions was provided through the ACCC's electronic communication service, and the applications were placed on the ACCC's web site. Interested parties were asked to make submissions to the ACCC regarding their views on the issues of public benefit and anti-competitive detriment arising from implementation of the proposed extension of the existing derogations.

The ACCC received submissions from the following interested parties:

1. CitiPower and Powercor (distribution businesses)
2. United Energy Distribution (distribution business)
3. Centurion Metering Technologies (metering business)
4. TXU Networks (distribution business)
5. Origin Energy (retailer)
6. AGL (retailer)
7. EziKey Group³ (prepayment metering business)
8. Trans Tasman Energy Group on behalf of the Retirement Villages Association.

The ACCC has produced this Draft Determination outlining its analysis and views of the amendments to the derogations according to the statutory assessment criteria set out in chapter 2. The ACCC invites the applicant and other interested persons to notify whether the applicant or other interested persons wish the ACCC to hold a conference in relation to this Draft Determination.⁴

If the applicant or an interested party notifies the ACCC in writing by Friday 17 December 2004 that it wants the ACCC to hold a conference, the ACCC will hold a conference at the ACCC's Melbourne office on Thursday 13 January 2005. The applicant, interested parties who receive a copy of the Draft Determination and any other interested parties whose presence the ACCC considers appropriate are entitled to participate in the conference.

Following the conference, the ACCC will take into account any relevant issues raised and any related submissions, and issue a Final Determination. The closing date for submissions in relation to the Draft Determination is Friday 21 January 2005.

³ EziKey's submission was made Commercial in Confidence and therefore was not placed on the ACCC's website.

⁴ For the purposes of the conference, an interested person is a person who has notified the ACCC in writing that the person, or a specified unincorporated association of which the person is a member, claims to have an interest in the applications and the ACCC is of the opinion that the interest is real and substantial.

A person dissatisfied with the Final Determination may apply to the Australian Competition Tribunal for its review.

4. Victorian Full Retail Competition Derogations

4.1 Background to the existing derogations

The ACCC has previously granted authorisation of Code changes that facilitate the introduction of Full Retail Competition (FRC) in the electricity market in the States and Territories participating in the National Electricity Market (NEM) (“FRC Code changes”).⁵

The ACCC’s authorisation of the FRC Code changes imposed conditions requiring the Jurisdictional Regulators to jointly review certain metering issues in the National Electricity Market and to assume the role of Metrology Coordinator in their respective jurisdictions.⁶ The Metrology Coordinator for each jurisdiction is responsible for developing a metrology procedure within that jurisdiction for metering installation types 5 and 6 and 7. Type 5 meters are manually read interval meters capable of reading and storing half-hourly electricity consumption. Type 6 meters are ‘basic’ or ‘accumulation’ meters. They do not provide interval metering data (but may provide time-of-use information) and are read manually. Type 7 ‘meters’ relate to unmetered supply. Type 5 and 6 meters may be prepayment meters. A Prepayment meter is a meter located at the customer’s premises that incorporates technology that relies generally on the prepayment of credit to supply electricity.

A “metrology procedure” contains information on the devices and processes that measure the flow of electricity and will establish the rules, processes, algorithms and procedures necessary for the conversion of metering data into a format suitable for wholesale market settlement.

4.2 Background to Victorian metering regulatory framework

FRC for small customers commenced in Victoria on 13 January 2002. The FRC Code changes authorised a set of provisions concerning the metering arrangements in the retail sector. The State jurisdictions individually pursued FRC derogations from those metering provisions.

The Victorian derogations were authorised by the ACCC on 11 August 2001, and were to expire on 30 June 2004. The derogations grant exclusivity for the provision of metering services by distribution businesses in Victoria for types 5-7 metering installations. The derogations, which are set out in clause 9.9A of Chapter 9 of the Code, amended the definition of a Local Network Service Provider (LNSP) under the Code, amended the provisions relevant to metering providers, and introduced

⁵ ACCC, Final Determination, Full Retail Competition and Registration of Code Participants, 4 August 2001.

⁶ The jurisdictions that participated in the Review and their corresponding Jurisdictional Regulators are the ACT (ICRC), New South Wales (IPART), Queensland (QCA), South Australia (ESCOSA), Tasmania (OTTER) and Victoria (ESC).

transitional arrangements covering the role of the Responsible Person and metering arrangements which are described in fuller detail in this paper at 4.3.1 and 4.3.2.

The Victorian Government has applied for authorisation to extend the derogations to the Code until 31 December 2006. For the purposes of this document, the LNSP will be referred to as the distributor or distribution business.

4.2.1 Victorian Mandatory Rollout of Interval Meters

In July 2004 the Essential Services Commission of Victoria (ESC) released its final decision on the Mandatory Rollout of Interval Meters for Electricity Customers.

Currently, the standard meters used by most small customers record a customer's accumulated total energy. To obtain the energy use for billing, the previous accumulated reading is subtracted from the current reading.

In contrast, interval meters record the consumption of electricity each half hour. This enables retailers to structure tariffs that more closely reflect the costs of purchasing power in the wholesale market, in which costs can vary on a half-hourly basis. Interval meters also facilitate more efficient pricing signals for distribution and transmission.

Interval meters are generally only used by large electricity customers because the costs of the meter are generally small in proportion to those customers' total energy bills. The interval meters used by large customers are generally classified as types 1- 4 metering installations. These classifications refer to meters that are remotely read, that is, the data can be uploaded from the meter to a centralised database at a location that is remote from the meter itself.

In its final decision on the mandated interval meter rollout, the ESC states that there is currently not a clear link between the wholesale market – which provides price signals about the supply-demand balance and the cost of supplying electricity – and the retail market – which sets prices for customers and influences their consumption patterns.⁷ The ESC states that price signals that are more closely linked to the wholesale market would enable customers to choose how much energy they consume, the time of use, and the prices they are prepared to pay.

Accumulation meters provide a 'profile' of a customer's consumption levels across a billing period. This profile does not demonstrate the energy usage, nor the costs of that consumption at different times of the day. Therefore, customers do not face signals to adapt their consumption according to the price of electricity at different times of the day. The lack of price signals for small customers is a key reason for the inelasticity of demand, particularly amongst small electricity customers.

In this context, the ESC believes that interval metering would provide a means of effectively linking the wholesale and retail markets and therefore provide customers with efficient price signals and thus lead to more effective demand management. The

⁷ Essential Services Commission (Victoria), *Mandatory Rollout of Interval Meters for Electricity Customers – Final Decision*, July 2004.

ESC states that among other benefits, interval metering will allow retailers to match their price offers to customers with the prices at which they purchase electricity from the wholesale market.

Process for proposed rollout of interval meters

The ESC's decision to mandate a rollout of interval meters in Victoria is based on the results of a cost-benefit analysis and industry consultation. Following this process, the ESC concluded that a rollout of interval meters would improve the competitiveness and efficiency of the electricity market in Victoria, and therefore contribute future net economic benefits to electricity customers and the wider economy.

The ESC states that interval meters enable retailers and customers to measure real time electricity consumption and to send and respond to the cost-related price signals that are essential to sustainable and efficient energy supply and consumption.

The ESC's decision is based on the following assessments:

- market forces alone would fail to deliver a timely interval meter rollout on a scale sufficient to provide economies in meter manufacture, installation and reading;
- regulatory intervention is necessary to achieve the economic benefits that would result from a more timely and large scale rollout
- based on the ESC's cost-benefit analysis, a net economic benefit would arise from a timely, mandatory rollout of interval meters; and
- the current cost increment between accumulation and interval meters is expected to fall over time.

The benefits that the ESC has quantified are based on the demand management efficiency gains that it contends will arise from avoided generation, transmission and distribution investment. The ESC has estimated these efficiency gains on the basis that customers will respond to interval meter based price signals, particularly during the peak periods in summer.

Therefore, the ESC has decided to proceed with the mandated interval meter rollout as follows:

- for large commercial electricity customers (those consuming more than 160 MWh per year), installation of new meters is to be completed by 2008 with new and replacement installation commencing in 2006 (there are around 4000 meters in this group);
- for business and large household consumers (using between 20 MWh and 160 MWh), interval meters to be installed by 2011 with new and replacement installations commencing in 2006 (around 220,000 meters in this group)

- for small business and household consumers (using less than 20 MWh and with more complex meters)⁸, installation is to be completed by 2013 with new or replacement installations beginning in 2006 – (there are around 650,000 meters in this group); and
- for all small business and household customers with the simplest metering, new and replacement installations will begin in 2008 (there are around 1.3 million customers in this group).

4.2.1 Joint Jurisdictional Regulators’ Review of Metering Types 5 & 6 and Metrology Procedures⁹

Under clause 7.13(f) of the Code, the Jurisdictional Regulators were responsible for jointly conducting a review to examine whether barriers currently exist to the adoption of economically efficient metering solutions, and, if so, to make recommendations about the reduction of those barriers. The Jurisdictional Regulators were required to review metering installation types 5 and 6, and consider options for developing nationally consistent metrology procedures. Clause 7.13(i) also required the Jurisdictional Regulators to review the effectiveness of the ringfencing arrangements for prescribed services and other services.

4.2.2 Summary of recommendations of the final report:

For the purposes of this Draft Determination, the key recommendations of the Joint Jurisdictional Regulators’ Review of Metering relate to the Responsible Person for metering services for small customers.

Specifically, the report recommends that Chapter 7 of the Code be amended to give distributors permanent responsibility for metering services for “small” customers. These are defined as customers who consume less than a certain threshold (‘z’)¹⁰ and have a metering installation that does not meet the requirements of metering installation type 1 – 4. The final report also recommends that metering for all large customers, and/or those with a meter that meets the requirements of metering installation types 1 – 4, should be competitive. This is depicted in the following table:

Table 1: Responsibilities for metering services

	First and second tier customers
Competitive metering services	Subject to jurisdictional decision, customers that consume more than ‘z’ MWh per annum and/or customers that have a meter installed that meets the requirements of a metering installation type 1, 2, 3, or 4.
Distributor responsible	Customers that do not have a meter that meets the requirements of a metering installation type 1, 2, 3, or 4.

⁸ Off-peak metering or three-phase metering.

⁹ See *Joint Jurisdictional Review of Metrology Procedures – Final Report*, October 2004.

¹⁰ The ‘z’ MWh per year consumption threshold is to be set by each jurisdiction.

In summary, the Jurisdictional Regulators recommended that distributors should be responsible for metering services for all small first and second-tier customers with a meter that does not meet the requirements of a metering installation type 1 – 4, and in the longer term, the Code should be changed to reflect this position. The report recommends that a package of Code changes to Chapter 7 of the Code to bring the recommendations of the Review into effect be submitted to NECA by 31 December 2005. In the shorter term, this position should be reflected by extensions to the existing derogations. Additional recommendations included that meter charges should be unbundled from distribution use of system charges, and that there should be equitable metering arrangements for first and second tier customers.

4.3 Effect of the proposed Victorian derogations

4.3.1 Responsible Person

The role of the Responsible Person is essentially a formal responsibility for managing the commercial aspects of the various aspects of the metering services process.

Clauses 7.2.2 and 7.2.3 of the Code specify that the distributor is the Responsible Person for metering installations within the distributor's local area, unless the Financially Responsible Market Participant (FRMP) *elects* to be responsible for a metering installation.

Except where the distributor is the Responsible Person, and is a registered Metering Provider, the Responsible Person must engage a registered Metering Provider to provide, install and maintain metering installations for which they are responsible.

The Code enables the Responsible Person to engage different Metering Providers for different aspects of the metering services. For example, the Responsible Person may engage a Metering Provider to install the meter, another to test the meter's technical capabilities, and another Metering Provider to carry out routine maintenance. Although it is between the two parties to establish the commercial arrangements, the Responsible Person cannot transfer its obligations under the Code to another party.¹¹

Under the existing Victorian derogations to the Code, clause 9.9A.2 of the Code provides that until 1 July 2004, distributors are *mandated* as the Responsible Person for type 5, type 6 and type 7 metering installations. The derogations also impose a requirement that the offer by the distributor to be the Responsible Person must be on terms that are fair and reasonable and do not unreasonably discriminate between retailers, with any dispute about the fairness and reasonableness of the terms to be determined by the ESC.

The current 'Responsible Person' derogation was to expire on 30 June 2004 by virtue of clause 9.9A.2(e) of the Code. It was subsequently extended by an interim authorisation.

¹¹ NEMMCO, *A Guide to the Role of the Responsible Person*, September 2004.

4.3.2 Payment for Metering

Clause 7.3.6(a) of the Code states that an FRMP for a connection point is responsible for all payment of costs associated with the provision, installation, maintenance, routine testing and inspection of the metering installation for that connection point. Clause 9.9A.3 of Victoria's derogations to the Code provides that the costs incurred by the distributor as Responsible Person for type 5, type 6 and type 7 metering installations may only be recovered in accordance with the distributor's licence conditions and other applicable regulatory instruments, which would include price determinations made by the ESC. The current derogation in respect of payment for metering was to expire on 30 June 2004 by virtue of clause 9.9A.3(b) of the Code. It was subsequently extended through an interim authorisation.

4.4 Issues for the ACCC

When applying the statutory test, the ACCC must consider the potential public detriment that may arise from the proposed conduct.

The arrangements that provide distributors with exclusivity for the role of Responsible Person for metering installation types 5, 6 and 7 in their local area may -

1. amount to an exclusionary provision, as the arrangements have the effect of reducing the supply of meters to electricity retailers by providers other than distributors for a particular connection point;
2. amount to a provision that substantially lessens competition, as the derogations may create a barrier to competition for the provision of meters and metering data services; and
3. amount to exclusive dealing, as the derogation requires electricity retailers to procure meters and metering data services from distributors for each connection point, to the exclusion of other potential suppliers.

4.5 Submission from the applicant

Victoria contends that metering competition is not necessary to enable the substantial benefits of FRC to be realised. It states that the market needs certainty about the regulatory environment, and in the absence of a recommendation from the Review to require competition in meter provision and metering data services,¹² it is reluctant to embrace competition in these areas.

The central public benefit arguments put forward by Victoria in requesting the continuation of the existing derogations relate to the maintenance of efficient, streamlined metering arrangements, the maintenance of efficient cost-recovery arrangements, concerns about 'meter churn' and increased costs, and the maintenance

¹² Victorian Application, *Proposed Derogations to the National Electricity Code Victorian Full Retail Competition Transitional Metering Arrangements* March 2004, p 6

of arrangements that may facilitate the uniform rollout of manually read interval (type 5) meters.

4.5.1 *Efficient, streamlined arrangements*

Victoria contends that the current derogations are simple and ensure clear metering arrangements. If retailers were able to elect to be responsible for meters and metering services, additional systems and processes would need to be implemented requiring complex arrangements to be established between retailers and distributors.¹³ If retailers are able to elect to be responsible for metering and metering services, these arrangements may have to be undone if changes to Chapter 7 of the Code are made to implement the recommendations of the Review.¹⁴

Victoria submits that the current arrangements have the public benefit of streamlining meter data arrangements between retailers and distributors, which would not necessarily be present if the existing derogations were removed. Additional costs would arise from the development of additional systems and procedures necessary for retailers to act as the Responsible Person. These costs would be passed on to end consumers in the contestable market. Distributors also enjoy the benefits of economies of scale in meter reading resulting from meter rounds that are undertaken within their entire distribution area.¹⁵

Victoria submits that, at the time that the application was submitted, local retailers servicing sub-160 MWh per annum electricity customers account for approximately 90% of the sub-160 MWh market (as at the time of the application). Victoria submits that because of this, it remains efficient for the distributors to continue to be the provider of metering services, and that it would take some time for second-tier retailers to establish a customer base that would provide potential economies of scale for competitive provision of these services.¹⁶

Victoria maintains that the market for efficient metering is still in transition, and therefore, distributor responsibility for existing metering should be retained.¹⁷

4.5.2 *Efficient cost-recovery arrangements*

Victoria contends that current cost-recovery arrangements are efficient. Recovery of the net costs associated with a type 6 meter is through network tariffs until 31 December 2005.¹⁸ The provision of manually read interval (type 5) meters is currently regulated as an 'excluded service' and cost-recovery for these meters is regulated by the ESC on a 'fair and reasonable' basis until 31 December 2005.¹⁹ Cost-recovery for type 7 metering installations (unmetered supply) is also regulated in this

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ *Ibid* p 7

¹⁶ *Ibid* p 8

¹⁷ *Ibid* p 8

¹⁸ *Ibid* p 8

¹⁹ 'Excluded services' are services that are not regulated as part of a distributor's regulatory asset base, and are regulated on a 'fair and reasonable' basis by the Essential Services Commission.

way until 31 December 2005. Licence conditions imposed on distributors require them to provide these excluded services on terms and conditions which are fair and reasonable, consistent with relevant guidelines and Price Determinations by the ESC.²⁰

4.5.3 *Meter churn*

Victoria contends that the development of a more competitive retail environment in the shortest practicable timeframe is best achieved by making the process of switching retailers as simple as possible. Victoria contends that allowing retailers to become responsible for meter provision at this time may promote meter churn, which may become a barrier to the further development of competition in the supply of electricity to small customers by imposing unnecessary ‘switching costs’ on customers.

Victoria submits that the risks inherent in introducing a large number of new systems if metering were to become contestable could have a negative impact on developing FRC, including negative publicity associated with complex transfer arrangements or system failure that could undermine consumer confidence in FRC, thereby inhibiting its development.

4.5.4 *Rollout of interval meters*

In relation to the facilitation of a rollout of manually read interval meters, Victoria states that it supports in-principle an interval meter rollout where the benefits exceed the costs.²¹ Victoria notes that the ESC has determined that for most customer sectors the benefits to be gained from manually read interval meters exceed the costs. Furthermore, the ESC submits that it would be difficult and less economic to mandate a rollout of manually read interval meters and share the costs of that rollout without distributors remaining responsible for these meters as under the existing derogations.²²

Victoria notes that the Parer Report recommended that an accelerated interval meter rollout should occur, with distributors owning the meters and their cost being included in the regulated distribution use of system cost base.²³

Victoria’s application quotes the ESC who noted that the metering derogations provide the following benefits:

“Mandating an interval meter rollout to be carried out by distributors may seem contrary to the policy to allow competition in metering services expressed in the NEC. This approach does, however, enable the benefits of a mandated rollout to be captured where the incremental costs can be smeared (via an excluded service charge) across all qualifying customers, not just those with interval meters on the grounds that customers as a whole are better off than in the absence of such a rollout.”

²⁰ Victorian Minister for Energy Industries and Resources, *Application for Authorisation*, 5 April 2004, p8.

²¹ Victorian Minister for Energy Industries and Resources, *Application for Authorisation*, 5 April 2004, p11.

²² *Ibid* p12.

²³ Victorian application cited in footnote 11, p 12

An issue arises if a rollout were mandated and the current derogation to the NEC that retains distributor exclusivity for meter provision for small customers...were lifted within the time frame of the rollout. If a retailer were to be able to appoint a meter service provider other than the distributor, the distributor should be assured of recovery of the outstanding costs of the program. Coordination between the jurisdiction and national market will be needed to avoid such a complication and to provide proper signals to all participants.”²⁴

4.6 Submissions from interested parties

CitiPower and Powercor, TXU Networks (TXU), and United Energy Distribution (UED) support the proposal to extend the existing derogations to 31 December 2006 on the grounds that the current arrangements are practical, efficient and that distributors are best placed to continue the efficient provision of type 5, type 6 and type 7 metering and related services. UED submits that an extension to the derogations will allow time for the development of Code changes to implement recommendations from the Review. UED also notes that if the existing derogations are not continued beyond 30 June 2004, IT systems and processes would not be in place to cope with competition in metering services for small customers.

TXU submits that the extension of the derogations would also ensure that costs are not unnecessarily incurred by stakeholders in implementing arrangements that might be changed once the Review is finalised. TXU also believes that the current metering arrangements are necessary in light of the proposal by the ESC to mandate the rollout of interval meters to all customers. The introduction of competition in the provision of the type 5, type 6 and type 7 metering services would impact significantly on the ability to rollout interval meters in the most efficient and cost-effective way.

AGL supports the proposal to extend the metering derogations, but only until June 2005, to ensure a smooth transition to alternative market-based metering arrangements.

AGL believes that once the derogations are removed there may be significant market benefits. AGL maintains that the analogy between FRC and metering contestability is strong. If it is sensible to have FRC, then it is sensible to also have metering contestability (at least for type 5 meters). AGL would support metering contestability as long as appropriate checks and balances are in place to ensure that industry and customers are not adversely impacted by the changes.

Centurion submits that there is no evidence to conclude that the proposed derogations can achieve greater efficiencies. It argues that if the existing arrangements for metering services are optimal, then there would be no risk in introducing competition into metering, and that retailers would have the choice of remaining with their current service providers. Centurion states that there has been little to no innovation in metering since the introduction of FRC.

Origin and Centurion believe that distributors do not provide particularly efficient metering services. Centurion submits that the cost of the services provided by

²⁴ Victorian application, cited in footnote 34. p12

distributors is unnecessarily inflated because distributors add a margin to the outsourced services while double-handling service orders when initiated by retailers.

Origin submits that the overriding benefit of enabling contestable metering services is the competitive discipline that would be imposed on the prices and quality of metering services to retailers and customers. Origin states that removing barriers to competition allows customers to exercise choice if and when the net benefits are available. Origin contends that instead of being a case for exclusivity, the current high cost of meter reading provides a case for greater competition which would be facilitated by ending the derogation. Centurion argues that economies of scale could actually improve as contracted service providers would not have to operate within geographic boundaries, and could incorporate readings of gas, water and electricity meters.

Centurion submits that for retailers to be competitive, they must have access to competitive services, but that this is precluded by the derogations. It argues that competition for metering services will enable electricity retailers to obtain metering data at competitive rates while encouraging innovation among metering service providers, which will enable retailers to differentiate their products and service offerings.

Centurion and EziKey argue that churn is an inevitable consequence of a de-regulated market. Centurion submits that meter churn is a necessary component of a competitive market; innovation will occur to ensure that there is no cause to remove the meter upon transfer. In a competitive market, it would be in no party's financial interest to replace useful assets.

Origin argues that distributors' metering exclusivity provides little incentive for innovation in metering. Origin also argues that the retailer is in the best position to measure the performance of a metering service provider, and has the financial incentive to ensure that quality data is delivered in a way that supports the retailer's billing processes. AGL and Origin also contend that the ESC's decision to conduct a rollout of interval meters should not be used as a justification for extending the derogation.

AGL and EziKey argue that ownership and control of meters by distributors creates a market structure that impedes innovation in retailing. EziKey also submits that the derogations deprive industry service providers of their ability to enter and compete in new markets.

EziKey submits that by uncoupling meter ownership and service provision from distributors, retailers will be able to select technologies and service providers that best meet their market objectives. Consumers will have a broader range of choices in electricity supply and will be able to select retailers that have the ability to package new and targeted offerings that acknowledge an array of consumer needs and lifestyles.

The Retirement Villages Association, in a submission prepared by the Trans-Tasman Energy Group, argues that the derogations should be amended to enable the provision of meters and metering services within embedded networks by 'exempt retailers', where the retirement village operator could opt to become an 'exempt retailer', on the grounds that there are efficiencies with this approach. Retirement village residents

could still choose to be serviced by a retailer other than the 'exempt retailer' / retirement village operator. The ACCC notes that the issue of metering in embedded networks is a separate issue that is currently being addressed through a NEMMCO review.

5. ACCC Considerations

Introduction

The intention of the authorisation provisions in the TPA is to grant authorisation where benefits to the public result from conduct, and the detriments resulting from the conduct, including the lessening of competition, are outweighed by those benefits.

As noted above, the effect of the Victorian derogation is to provide distributors with the exclusive right to provide metering services for small²⁵ electricity retail customers using metering installation types 5-7, or in other words, assume the role of the Responsible Person for metering. In the absence of the derogation, the Code allows retailers to elect to be the Responsible Person. This is also referred to as metering competition.

The derogation also makes minor “statute law revisions”, and the ACCC accepts that there are public benefits associated with these changes.

The arrangements that provide distributors with exclusivity for metering provision may raise the following trade practices issues:

- the conduct may be taken to be an exclusionary provision, as the arrangements have the effect of restricting the supply of metering services to electricity retailers by providers other than the LNSP; or
- provisions substantially lessening competition, as the derogation effectively disallows competition for the provision of metering services; or
- exclusive dealing, as the derogation requires electricity retailers to procure metering services from a particular LNSP.

By imposing a legal monopoly over service provision, the derogation has the potential to impede the basic economic efficiencies that generally can be achieved in competitive markets, particularly in relation to innovation and lowering costs. In the absence of the derogation, retailers’ ability to pursue innovative metering is enhanced, and they are free to procure meters and metering data services more cost effectively where they are available.

Therefore, under the authorisation test, in order to justify the extension of the derogations, it must be demonstrated that the derogation produces net public benefits that would not occur, or would be lost, in the absence of the derogation. The ACCC has considered Victoria’s applications and the submissions from this premise.

²⁵ The definition of “small” customers is currently determined by each state jurisdiction according to consumption thresholds. In Victoria, “small” customers are defined as customers who consume less than 160 MWh per annum, and therefore includes the bulk of commercial electricity customers. Average Victorian residential customers consume 5.2 MWh per annum.

This section considers the arguments advanced by Victoria, submissions from interested parties, and issues raised by interested parties throughout the ACCC's consultation process.

Transition to effective full retail competition

The applicant argues that the derogations provide a net public benefit because the retail market, and the market for efficient metering, is still in a transitional phase, and needs to be regulated accordingly. The ACCC notes that according to the ESC's most recent review,²⁶ by the end of April 2004, approximately thirteen percent of Victorian electricity customers had switched retailers. These were mostly higher margin customers who typically consume more than 6MWh of electricity per annum.

Some interested parties have submitted that the benefits of metering competition only materialise in the large customer segment, where the benefits of a type 4 metering installation exceed the costs. As meter costs are a small percentage of large customers' bills, large customers would be in a better position to absorb any transaction costs arising from meter churn.

The ACCC acknowledges this assertion, and notes that the Joint Jurisdictional Regulators' report on metrology makes recommendations which aim to extend metering competition in the large customer segment – to large first tier customers and for customers that have a meter that meets the requirements of a metering installation type 1, 2, 3 or 4. The recommendations avoid definitions of “small” and “large” that are purely consumption based, to ensure dynamic responses in the market as the costs of innovative metering solutions change.

The ACCC considers that this recommendation is a constructive means of advancing metering competition where it is efficient. However, the ACCC considers that this recommendation could be enhanced to enable all types of remotely read interval meters to be contestable, given that under existing meter classifications and the wording of the derogation proposed by Victoria, only metering services for interval meters that are remotely read on a daily or weekly basis would be contestable. The ACCC's considerations on this point are detailed further in the section addressing innovation in metering, below.

Meter churn and barriers to switching

Victoria submits that if a retailer can elect to be the Responsible Person for meter types 5 and 6, it may have an incentive to unnecessarily replace an existing meter with a new meter, and charge the customer for the costs. If meters were replaced each time that a customer switched retailer, the result could be inefficient meter churn on an ongoing basis.

Victoria's application acknowledges that in some circumstances, meter churn may be efficient, such as when a more efficient meter technology is suitable for the customer.

²⁶ Essential Services Commission, Final Report, *Special Investigation - Review of the Effectiveness of Full Retail Competition in Gas and Electricity*, 22 June 2004.

The ACCC considers that meter churn can also be a by-product of the adoption of innovative forms of metering.

However, Victoria submits that allowing retailers to become responsible for meter provision while the market is still in a transitional phase, may promote inefficient meter churn and hence become a barrier to the further development of retail competition. A related problem is that distributors' metering assets could become stranded where they are replaced by retailers before the asset has been fully depreciated.

The ACCC considers that this view assumes that retailers will tend to replace meters, irrespective of whether this is a commercially beneficial decision. It is likely that a rational retailer (that does not wish to create barriers to switching) will only choose to replace meters when it is efficient to do so, such as when the meter has reached the end of its useful life or if greater efficiencies can be obtained from obtaining a new meter from the competitive market.

The ACCC considers that concerns that meters will be removed in circumstances where it is inefficient to do so, may be overstated, and that avoiding meter churn is not of itself sufficient reason to continue the metering derogations. If the retailer did choose to be a meter owner as part of its role as the Responsible Person, it may be uneconomic for it to choose to remove a meter from a customer's site if the meter still has a useful life.

A separate but related issue is that meter churn may create barriers to switching. The discussion in Victoria's applications on barriers to switching reflects a concern that metering competition provides retailers with incentives to lock customers into retail contracts by way of upfront or exit meter charges.

Barriers to switching can arise from retailer initiated meter churn because the retail contract may provide for meter charges, including exit charges, which deter a customer from switching to another retailer, and hence limit the extent of retail competition. Additionally, discussions with interested parties have highlighted a view that in a competitive metering market, the transaction costs associated with changing meters when a small customer chooses to switch retailer, means that retailers would only compete for customers once, resulting in the market becoming static after initial switching and meter replacement.

The ACCC acknowledges that if retailers did remove meters in circumstances where it was not efficient to do so, the cost of a new meter and its installation is likely to deter some customers from switching retailers. Customers may subsequently be deterred from switching by any exit charges associated with the meter. However, concern that retailers would have an incentive to use the new meter as a means of discouraging the customer from changing retailers again may be addressed through regulatory arrangements. The ACCC notes that, in the United Kingdom, the Office of Gas and Electricity Markets (Ofgem) has endeavoured to address the problem of meter churn and barriers to switching through regulation.

Ofgem recently introduced licence conditions for retailers, whereby meter churn is discouraged if the customer and new retailer do not want it to occur. These regulations

ensure that customers only choose to enter into supply contracts with retailers based on the customer's express consent for the replacement of meters. Ofgem's arrangements are also designed to protect the distributor from stranded asset risk. The ACCC notes that these regulations will become of material relevance from 1 April 2005 when Ofgem will formally remove metering charges from the distribution regulated asset base. Therefore the effectiveness of the regulations will only become apparent from that time.

Furthermore, interested parties have argued that regulation might ensure that meter churn is minimised, but that this would merely replicate the outcomes that presently result from the distributor exclusivity. Therefore, the transaction costs associated with introducing regulation in this area would need to be considered and weighed against the potential benefits of metering competition.

The ACCC considers that the cost of regulating meter churn is a legitimate issue that should be considered as part of the response to the recommendations of the Joint Jurisdictional Regulators review of metrology.

Impact on innovation

Interested parties have submitted that extending the derogation could have a detrimental effect on innovation in metering and metering services.

The ACCC anticipates that in the absence of the derogation, retailers would be better placed to utilise their knowledge of their customers and the market to achieve efficient metering outcomes for small retail customers. The ACCC is of the general view that, irrespective of future directions in metering, a straightforward approach may be for the market to determine the most efficient means of supplying metering services.

In relation to metering data services, and as noted in submissions, retailers have raised the potential economies of scope from enabling innovation in metering services, primarily across gas and electricity, but potentially also for water metering. Retailers have also submitted that the ability to source alternative metering data providers could improve the quality of the metering data, and lower costs. Conversely, distributors have incentives under CPI – X regulation to pursue cost efficiencies, but unlike retailers they do not face the same commercial incentives to pursue innovation to provide more innovative price/service offerings. It can be argued that although meter reading in the gas and water markets is currently not contestable, combined utility meter reads, such as those suggested by Origin Energy, are currently possible despite the derogation, because price controls give distributors an incentive to lower the costs of meter reading. However, the ACCC understands that retailers would prefer to be in a position where they would not have to negotiate with distributors to innovate in this way.

In relation to type 6 metering installations, the ACCC also recognises that in the context of a mandated interval meter rollout, new type 6 meter installations would be phased out. The standard interval meters that would be installed by distributors under the mandated rollout, will be manually read interval meters. Therefore, metering innovations in Victoria are likely to involve enhancements to interval meters.

Furthermore, it appears that currently, the metering innovations identified in submissions, and those that are emerging internationally, involve meters with remote reading and communications technologies.

While the ACCC recognises that metering innovation is likely to arise through technologies that involve remote meter reading capabilities, NEMMCO's current metering type classifications reflect the specific differences in meter capabilities. For example, type 4 interval meters must be read on a frequency to meet market settlement timeframes (generally, weekly), and these are therefore typically only cost effective for very large customers.

The ACCC understands that some interval meters may have the capability to meet the requirements of a metering installation type 4, even though they may not be read at the frequency required to be classified as a type 4 metering installation. The Joint Jurisdictional Regulators' final report recommends that metering competition be extended to customers who consume more than 'z' MWh per annum and to those who use a meter that meets the requirements of metering installation types 1 to 4, as defined by NEMMCO's definitions of metering types.

The ACCC understands that, under the exclusivity derogations as submitted to the ACCC, NEMMCO's classifications would need to be amended to enable innovations such as remotely read interval meters that are read less frequently to penetrate the market through retailer innovation. However, the issue of meter classifications is a broader National Electricity Code issue which is more appropriate to be addressed during the response to the Jurisdictional Regulators' report.

It has been suggested, therefore, that some anti-competitive effects of the derogation could be addressed through conditions of authorisation that would ensure that any remotely read interval meters are not captured by the derogation regardless of the frequency with which they are read, and irrespective of whether they meet the existing requirements for type 4 metering installations, thereby enabling innovations to materialise. The ACCC considers that, given that future innovation in Victoria (enhancements of the standard interval meters) is likely to comprise forms of remotely read interval metering, a condition to ensure this can occur is necessary. Such a condition will ensure that retailers can pursue innovation in remote interval meter reading solutions that are most suitable for their customers.

Type 7 installations relate to unmetered supply which generally involves forms of public lighting. The ACCC considers that the case for distributors to continue in the longer term to be the exclusive providers of metering data services for unmetered supply is much stronger for this class of installation, particularly as distributors are required to maintain inventory, load and on/off tables that drive the load profiles for each class of type 7 load. Furthermore, innovation is not likely in this particular area of metrology.

Facilitation of a mandated interval meter rollout

The ACCC notes that a major driver for Victoria's application is to facilitate the mandated interval meter rollout which is due to commence in Victoria in 2006.

In considering this application for derogations, the ACCC recognises that the ESC's decision regarding the mandated rollout is a legitimate policy initiative. While applying the authorisation test, the ACCC aims to accommodate that decision. However, in weighing up the benefits and detriments of Victoria's application, the ACCC has also considered whether the rollout could be successfully implemented in the absence of the derogation.

The interval meters to be rolled out to small customers are manually read interval meters (i.e., type 5 meters), which are currently subject to distributor exclusivity.

Although the derogation also involves type 6 accumulation meters, this particular section of the ACCC's analysis focuses on the natural monopoly properties of manually read type 5 meters given their relevance to the mandated rollout.

Victoria submits that distributors should be exclusively responsible for manually read type 5 meters for several reasons. For the purposes of this authorisation analysis, the more pertinent claims are that distributors have significant economies of scale in the provision of manually read type 5 meters.

In weighing up the benefits and detriments of distributor exclusivity, the ACCC considered the counter-factual scenario, while taking the interval meter rollout as a given. The ACCC considered whether it would be possible to mandate the Responsible Person, whether it were a distributor or retailer, to install interval meters according to the ESC's stipulated time frame, without negative impacts on the mandated rollout.

The ACCC recognises that enabling retailers to elect to be the Responsible Person, and install manually read interval meters, may add logistical complexity to the roll-out. For example, in a competitive metering environment, the ESC would be required to monitor retailers to ensure that the rollout was occurring in accordance with the ESC's schedule. In a competitive retail market, the possibility that one of a number of parties would be responsible for installation of an interval meter would complicate the regulator's monitoring role. Distributor exclusivity provides greater certainty over the timing of meter installation and facilitates regulation of the roll-out.

A competitive metering environment would also add some complexity to the cost recovery arrangements proposed by the ESC for the roll-out.

Cost recovery

The ACCC understands that, assuming the derogation is extended, the proposed cost recovery arrangements for metering for small customers, will commence from 1 January 2006 as follows:

- All standard metering services for types 5-7 meters, including the associated metering data services, will be classified as prescribed services on the basis that there is not potential or effective competition for these "basic" metering services. These services are to be unbundled from the DUoS charges and regulated as a separate metering charge;

- Any non-standard meter, such as one with remote reading capabilities, would be classified as an excluded service; and
- If the meter were a metering installation type 1, 2, 3 or 4, it would not be regulated on the basis that these are competitive services.

The ESC has advised that, in the absence of the derogation, metering services for all type 5 meters would remain as excluded services. According to the ESC, this has significant implications for the cost recovery program of the interval meter rollout, which is predicated on the classification of this service as a prescribed service.

The ESC notes that if metering services for type 5 interval meters were excluded services, the Responsible Person, whether a distributor or retailer, would seek to recover their upfront costs over a shorter time period relative to prescribed services. For example, a distributor might wish to accelerate the cost recovery to compensate for not having the certainty of recovering the cost of the asset through regulated charges over an extended period. The ESC contends that metering exclusivities will enable the cost of replacing meters for small customers to be amortised over an extended timeframe, and across the customer base with that type of meter.

In a competitive metering environment, a retailer may wish to recover costs quickly given the risk that its customer may switch to another retailer at a later stage. The ACCC understands that there are concerns that retailers would be reluctant to rollout interval meters on the basis of these risks, or alternatively, retailers would only install interval meters in a manner that maximises their profit margin. The ESC claims that in the absence of the derogation, retailers would be less likely to install interval meters to customers with high peak loads, but that the benefits of the interval meter rollout are more likely to accrue from these customers. The ESC perceives these factors to be significant risks to the success of the mass rollout of interval meters.

The derogations will enable the ESC to smooth the impact of the roll-out on customer bills. The ESC submits that a distinct upfront charge for an interval meter will have an adverse impact on small customers, as that charge may be significant relative to a customer's bill. The ESC also states that where customers are liable for an upfront metering charge and the retailer installs an interval meter at the time of transfer, they would be less likely to switch retailers, thus creating a barrier to competition in the primary electricity market.

The ACCC acknowledges that enabling retailers to be the Responsible Person would require the costs of interval metering to be recovered on the basis that they are contestable services, which (in the absence of regulatory intervention) would result in the additional cost of interval metering being borne by customers through a distinct upfront charge. If these arrangements deter customer switching, or increase the initial financial impact of the interval meter rollout, then metering competition may present logistical difficulties for the rollout.

However, in relation to the perceived risk that retailers would not rollout interval meters to customers with high peak loads, the ACCC notes that the interval meter rollout would be mandated by the ESC, and not left to the retailers' discretion.

Economies of scale

It is argued that distributors have economies of scale in manual meter reading due to meter rounds that are undertaken within their entire distribution area. Therefore, Victoria submits that an increase in the number of metering providers due to metering competition would not derive the same efficiencies.

Conversely, it could be argued that although economies of scale in manual meter reading may exist, metering competition does not mean that these economies will be lost, but merely that retailers would have the choice to adopt the most efficient metering services that are available in the market. The relevant question is whether the extension of the derogation will prevent economies of scale from being lost, and not whether or not further efficiencies can be gained under metering competition.

As noted above, if economies of scale exist, the ACCC would expect that retailers would not opt to become the Responsible Person. Therefore, the ACCC considers that metering competition would not necessarily reduce economies of scale in manual interval meter reading. Moreover, the ACCC considers that the same is true for type 6 metering.

The ESC also states that its cost-benefit analysis of the manually read interval meter rollout, assumes that distributors will be exclusively responsible for providing manually read type 5 meters, and hence that there will be economies of scale in procuring and installing the manually read interval meters for the rollout. The ESC claims that additional costs that will be incurred if retailers are able to choose whether to rollout interval meters include a potential reduction in quantity discounts.

However, as with meter reading, the ACCC expects that a retailer would only elect to undertake this responsibility if it faced efficient price signals. If distributors are the most efficient providers of metering services, then it would be in the retailers' commercial interests to continue to procure metering services in this way.

Efficient price signals

The ACCC examined whether, in the absence of the derogation, and in the context of the mandated manually read interval meter rollout, the regulatory framework in Victoria would provide incentives for retailers to be the Responsible Persons for metering, and pursue innovation in interval metering.

As outlined above, all standard metering services for types 5-7 meters, will be classified by the ESC as prescribed services on the basis that there is not potential or effective competition for these "basic" services. Any non-standard meters, such as one with remote reading capabilities, would be classified as an excluded service. Meanwhile, if the meter were a metering installation type 1-4, it would not be regulated on the basis that these are contestable services.

The impact of this framework is that, given the choice, retailers would face limited incentives to own or procure manually read meters. Instead, the framework implicitly

encourages retailers to adopt remotely read interval meters and avoid the distributor monopoly. This is in line with the ESC's expectations that future innovations in the market are likely to stem from forms of remotely read interval metering.

Efficient streamlined arrangements

Metering data must be collated, processed and delivered to NEMMCO for use in settlement of a retailer's energy purchases in the wholesale market. Metering data is also transferred to participants. Distributors require metering data for billing network charges, and retailers require metering data both for billing their customers for energy consumption and for reconciling their wholesale settlement obligations.

Victoria submits that the current arrangements are practical and efficient, and that LNSPs are best placed to continue efficient provision of metering services for types 5-7 metering installations.

Victoria argues that the derogations provide public benefits because:

- the necessary data flows are simplified because LNSPs provide a single source of data for all types 5 and 6 metering points within the LNSP's area; and
- arrangements for maintaining the data required for the settlement of unmetered supply (type 7) loads are streamlined.

Victoria also argues that additional costs would arise from the development of additional systems and processes necessary for the retailers to act as Responsible Person, which would be passed through to customers.

The ACCC notes that distribution businesses routinely contract with independent parties for the provision of metering and metering data services. This is also the case in the market for metering types 1 – 4, where the retailers commonly elect to undertake the role of the Responsible Person.²⁷ It could be expected that metering services would also be provided to retailers on a similar basis in a competitive market for metering types 5 – 7.

The ACCC considers that retailers have a commercial incentive to pursue metering solutions that are efficient and that would be to the benefit of their businesses. In the absence of the derogation, if the most efficient metering solution is for retailers to retain the services provided by LNSPs, then this is likely to be the case. This view is supported by the conclusions of a consultancy commissioned by the ACCC from Frontier Economics.

The ACCC also notes Frontier's view that, as distributors are the default providers of metering services, retailers will only choose to become responsible for metering where the competitive market can provide better services than the distributors. The ACCC also notes that the role of the Responsible Person is subject to monitoring and

²⁷ Types 1 – 4 meters are typically used by very large electricity users. Under the Code, retailers have the choice to be the Responsible Person for these metering installations. Hence, the market for metering types 1 – 4 is competitive.

enforcement by NEMMCO, and therefore that retailers would be subject to the same pressure to maintain obligations regarding data integrity as distributors would. NEMMCO notes that there has not been a significant difference in the quality of metering data where retailers have elected to be the Responsible Persons for metering installation types 1-4. However, NEMMCO has expressed concern that retailers have effectively subcontracted the role of Responsible Person to third parties, and that this may have implications for the quality of metering data in the mass metering market (i.e., metering installation types 5 and 6). The ACCC notes that NEMMCO has the ability to monitor Responsible Persons' compliance with their obligations, but that NEMMCO's responsibilities do not extend to enforcement of those obligations.²⁸

Joint Jurisdictional Regulators' Review of Metrology

As outlined earlier in this document, the Jurisdictional Regulators have conducted a review canvassing a wide range of metering and FRC issues and have identified areas for possible Code changes. The final report proposes a number of Code changes to give effect to its recommendations.

The ACCC accepts that it is necessary to extend the derogations to ensure that there is a comprehensive response to the final recommendations of the Jurisdictional Regulators, and to provide regulatory certainty in the interim. The ACCC also notes that one of the recommendations of the Jurisdictional Regulators' review is that all small customers should be treated equitably in relation to metering services. Currently the Code only regulates metering services provided to second tier customers. The default position for first tier metering under Victorian regulatory instruments is that the distributor is the responsible person.

A Code change will be necessary to bring regulation of first tier customer metering under the Code. Therefore, if the Victorian derogations were to lapse now, the result would be that second tier retailers retailing to small customers would have the choice to be the Responsible Person but first tier retailers for small customers would not. The ACCC recognises that having different metering arrangements for small first and second tier customers (pending any future Code changes) introduces market complexities.

Victoria has applied for the derogations to be extended until 31 December 2006 to avoid uncertainty should those proposed changes be delayed for any reason. The ACCC considers that it is appropriate to have a balance between allowing sufficient time for implementing the Jurisdictional Regulators' recommendations, whilst minimising the anti-competitive detriment of metering exclusivity.

The ACCC recognises the disruption that may occur as a result of having FRMPs elect to be responsible for metering, given that Code changes may be initiated in the future in response to the recommendations of the Review regarding ongoing distributor metering exclusivity.

²⁸ National Electricity Market Management Company 2003, *Annual Metering & Retail Development Report 2003*, p34.

In view of the complexity of the issues to be addressed in those Code changes, the ACCC considers that in these circumstances an extension of the derogations until 31 December 2006 is an appropriate timeframe. The ACCC considers that two years is sufficient time in which to implement Code changes to respond to the recommendations of the Joint Jurisdictional Regulators' review.

The ACCC anticipates that the substantive issues concerning metering competition will be revisited in the Code change process that responds to the recommendations of the Joint Jurisdictional Regulators' Final Report on the Review of Metrology Procedures. Nevertheless, the ACCC considers that the process of developing permanent metering arrangements in the Code is an opportunity to promote efficiency and innovation in metering, to enable the full benefits of full retail competition to be realised.

Conclusion

The *Trade Practices Act 1974* requires the ACCC to assess whether the extension of the derogations would produce a net public benefit that would not occur, or would be lost in the absence of the derogation.

From an economic and commercial perspective, it could be expected that, given the choice, a rational retailer would tend to pursue metering solutions that are efficient and beneficial to its business. This may involve two main options. Firstly, retailers might elect to become the Responsible Person and seek innovative or cost-advantageous metering services. Alternatively, retailers may choose to retain LNSPs as the Responsible Persons where this is perceived to be efficient. Furthermore, some of the perceived problems associated with metering competition, as outlined in Victoria's application, could be addressed through amendment or enhanced enforcement of retail licensing and Code obligations, rather than by maintaining a monopoly on metering services.

The ACCC notes that a major driver for Victoria's application is the facilitation of effective competition in the retail market through the mandated interval meter rollout which is due to commence in Victoria in 2006. In considering this derogation, the ACCC has taken the ESC's decision to mandate a rollout of interval meters, and the calculated economic benefits of the rollout, as a given. The ACCC accepts that the implementation of metering contestability for small customers may create additional logistical complexity for the rollout, and recognises that it may lead to accelerated recovery of the rollout costs. The ACCC notes that the ESC's calculation of benefits anticipated from the rollout, including establishing a digital platform for remote reading innovation, are predicated on the continuation of distributor exclusivity for type 5 meters.

The ACCC considers that the key public benefit provided by the derogations is to ensure there is sufficient time to respond to the recommendations of the Jurisdictional Regulators' review. The ACCC therefore accepts that the derogations should be authorised in order to provide interim arrangements that enable the development of a coordinated response to the recommendations of the Joint Jurisdictional Regulators' Review of Metrology Procedures. The ACCC considers that allowing the derogations

to be in place until 31 December 2006 will allow sufficient time to implement any Code changes in response to the Jurisdictional Regulators' review.

The ACCC also considers that there is public benefit in making the "statute law revisions" sought by the derogations.

The ACCC considers that the case for ongoing distributor exclusivity is likely to be stronger in relation to unmetered supply. Due to the LNSP's requirement to keep up to date information on these Type 7 installations they are likely to be best placed to administer these installations. Further, the possibility of innovation in this area is minimal.

The ACCC considers that the key detriment arising from metering exclusivity is that it prevents responsibility for metering residing with the entity most likely to introduce innovative metering arrangements, the retailer.

In the context of the mandated interval meter rollout, innovations in type 6 metering are unlikely. Metering innovation beyond the standard manually read meter offering is likely to involve forms of remotely read interval meters, including type 4 meters that are not currently subject to the derogation. The ACCC understands that currently, type 4 meters are generally suitable for very large retail customers only. Therefore, the existing meter classifications may not enhance the opportunities to extend metering competition to small customers where it is efficient.

Taking into account the public benefits and anti-competitive detriments associated with metering exclusivity, the ACCC considers that it is necessary to impose a condition of authorisation to ensure that the derogations meet the authorisation test. The ACCC considers that the derogations should be amended so that remotely read interval metering solutions that are suitable for small retail customers are not subject to distributor metering exclusivity. This would facilitate retailers' pursuit of innovative metering solutions that are most suitable for their customers.

Therefore, this Draft Determination imposes a condition of authorisation to ensure that any interval meter that incorporates reading capabilities, irrespective of how frequently the meter is remotely read, will not be subject to the derogation.

C1 Clause 9.9A.1 must be amended by the addition of the following provisions:

- (c) For the purposes of clause 9.9A.2 and 9.9A.3 of this *derogation*, a reference to a "type 5 *metering installation*" is a reference to a type 5 *metering installation* that includes an interval meter that is manually read.**
- (d) Despite anything in the preceding paragraph, clauses 9.9A.2 and 9.9A.3 of this *derogation* do not regulate the provision, installation and maintenance of a type 5 *metering installation* that includes an interval meter that is remotely read, regardless of the frequency with which that interval meter is read.**

- (e) **In the previous paragraph, “an interval meter that is remotely read” means an interval meter that:**
- i) is designed to transmit metering data to a remote locality for data collection; and**
 - ii) does not, at any time, require the presence of a person at, or near, the meter for the purposes of data collection or data verification (whether this occurs manually as a walk by reading or through the use of a vehicle as a close proximity drive-by reading);**
- and includes but is not limited to an interval meter that transmits metering data via:**
- 1) direct dial-up;**
 - 2) satellite;**
 - 3) the Internet;**
 - 4) GPRS;**
 - 5) power line carrier; or**
 - 6) Any other equivalent technology.**
- (f) **This clause 9.9A.1 ceases to apply on the date on which clause 9.9A.2 ceases to apply.**

6. Draft Determination

On 5 April 2004, the Australian Competition and Consumer ACCC (ACCC) received applications for authorisation (Nos A90915, A90916 and A90917) of derogations to the National Electricity Code (Code). The applications were submitted by the National Electricity Code Administrator (NECA) on behalf the Victorian Minister for Energy Industries and Resources.

The applications were made under sub-sections 88 (1) and 88 (8) of the Act to:

- make or give effect to a contract or arrangement, or arrive at an understanding, where a provision of that proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of the Act (Form A)
- make or give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act (Form B)
- engage in conduct that constitutes or may constitute the practice of exclusive dealing, within the meaning of section 47 of the Act (Form E).

For the reasons outlined in Chapter 5 of this determination, the ACCC proposes, subject to any pre-determination conference requested pursuant to section 90A of the Act, to grant authorisation to applications A90915 and A90916 pursuant to subsection 88(1) of the Act and to grant authorisation to applications A90917 pursuant to subsection 88(8) of the Act.

The period of authorisation is to 31 December 2006.

The ACCC proposes to impose a condition that any interval meter that incorporates remote reading capabilities, irrespective of how frequently the meter is remotely read, will not be subject to the derogation.

Condition:

Clause 9.9A.1 must be amended by the addition of the following provisions:

- (c) **For the purposes of clause 9.9A.2 and 9.9A.3 of this *derogation*, a reference to a “type 5 *metering installation*” is a reference to a type 5 *metering installation* that includes an *interval meter* that is manually read.**
- (d) **Despite anything in the preceding paragraph, clauses 9.9A.2 and 9.9A.3 of this *derogation* do not regulate the provision, installation and maintenance of a type 5 *metering installation* that includes an *interval meter* that is remotely read, regardless of the frequency with which that *interval meter* is read.**

- (e) **In the previous paragraph, “an interval meter that is remotely read” means an interval meter that:**
- i) is designed to transmit metering data to a remote locality for data collection; and**
 - ii) does not, at any time, require the presence of a person at, or near, the meter for the purposes of data collection or data verification (whether this occurs manually as a walk by reading or through the use of a vehicle as a close proximity drive-by reading);**
- and includes but is not limited to an interval meter that transmits metering data via:**
- 1) direct dial-up;**
 - 2) satellite;**
 - 3) the Internet;**
 - 4) GPRS;**
 - 5) power line carrier; or**
 - 6) Any other equivalent technology.**
- (f) **This clause 9.9A.1 ceases to apply on the date on which clause 9.9A.2 ceases to apply.**