

Submission to the Australian Competition and Consumer Commission

Re: Draft Determination Extension of Victorian Full Retail Competition Derogations



**UNITED ENERGY
Distribution**

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1. Introduction

The Victorian derogation contained in Chapter 9 of the National Electricity Code (NEC) grants exclusivity for the provision of metering services for certain metering installation types by distribution businesses in Victoria. These derogations were due to expire on 30 June 2004 and the Australian Competition and Consumer Commission (ACCC) has granted interim authorisation to extend the derogation to 31 December 2006 at the request of the Victorian government.

After further consultation with interested parties, the ACCC have issued the Draft Determination consistent with an extension to 31 December 2006 with an additional condition that any type 5 metering installation that includes an interval meter that is remotely read, regardless of the frequency with which that interval meter is read, is expressly not included within the derogation. This in effect renders all remotely read interval meters outside the bounds of the derogation.

In its conclusion to the Draft Determination (28) the ACCC in part states:

“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”.

“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 LNSP’s, 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 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”.

United Energy Distribution (UED) welcomes the opportunity to comment on the Draft Determination and has a number of concerns regarding regulatory certainty and metering definitions which are outlined in our response below. UED support the extension of the derogations as drafted in the interim authorisation in preference to the conditions imposed by the Draft Determination, for a number of reasons outlined below.

2. What has changed in the last 6 months?

UED supported the extension of the derogation together with many other industry players. In June 2004, the ACCC made the decision to proceed with an interim authorisation which UED supports.

In approving the initial derogation, the ACCC reasoned that the derogation provided a net benefit due to the:

- simplicity and clarity of obligations relating to metering services,
- the arrangements may more easily facilitate an interval meter roll out,
- a public benefit in relation to the simplification of meter dataflows and data access as the LNSP already needs to use this data,
- for unmetered loads this also streamlines maintaining load and inventory tables, and
- avoids unnecessary meter churn that is costly, wasteful and may discourage customers from switching retailers.

The ACCC recognised the need to extend the metering derogation to provide some certainty in the interim while the metrology and NEC review occurred to enable a single national metrology procedure and hence made the interim authorisation.

UED note that the ACCC continue in their Draft determination to recognise that:

- meter churn will create additional costs,
- that the carve out of this new type of meter is not consistent with the NEC definitions,
- that the smearing of metering charges is considered vital to the success of the interval meter roll out and the ability to smear costs across customer groups,
- that upfront metering charges caused by metering competition will in the Essential Services Commission's (The Commission's) opinion have an adverse impact on small customers and will create a barrier to competition,
- substantial issues concerning metering competition will be revisited in the NEC change process that responds to the Joint Jurisdictional Regulators Review; and
- 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 roll out costs.

Given the elapsed time of barely 6 months and comments from Centurion¹ that there is little to no innovation in the contestable metering arena now, what has changed? The benefits of the extension of the derogation have not altered, nor has the recognition that the harmonised metering arrangements needs to be dealt with in the NEC change process over the next 2 years.

¹ ACCC, Draft Determination, Extension of Victorian Full Retail Competition Derogations, 1 December 2004, P 15.

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UED believes that of these concerns raised in the initial derogation process, the reasoning is still valid. These same issues have been recognised by the ACCC in the Draft Determination, hence warranting the derogation to continue as drafted. UED does not support the condition added by the ACCC in its Draft Determination of 1 December 2004 for the reasons outlined below.

3. Imposed conditions inconsistent with the NEC

This Draft Determination imposes a condition of authorisation to ensure 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.

Type 4 meters are defined as remotely read interval meters which are downloaded daily or weekly to meet settlements timeframes, whereas type 5 meters are defined as manually read interval meters in the Draft Determination. An interval meter which is remotely read with a frequency other than daily/weekly currently fits neither category clearly as it still has “the capability” of being read daily. UED is concerned with conditions imposed through derogations that change the NEC definitions. These definitions are fundamental to classifying the meter and hence the relevant metrology procedure and underlying rules and supporting business processes. Is this new meter type a type 5 or a type 4 meter or a type 4.5 meter? The remote reading definition as drafted is causing confusion and different interpretations across the market.

4. Potential for process impacts

UED suggests that it may be better that the ACCC require the review of remote read interval meters as part of the national metrology harmonisation project to allow the necessary changes to be reviewed in a coordinated manner. If the condition is incorporated into the Chapter 7 and Metrology changes then this will enable widespread review of how business process impacts will be dealt with. For example what is the next scheduled read date for a remotely read type 5 meter? Can Distributors IT systems deal with variable and changing read frequencies as retailers seek to innovate their service offerings? Will contestable service providers be providing data in the Business to Business formats for not only meter reading data but service orders also, eg special meter read response for a final bill?

5. Interim approach and regulatory certainty

The ACCC considers that retailers will only 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 a new meter from the competitive market. The reasonable retailer is expected to make rational commercial decisions as opposed to strategic decisions (locking profitable customers into multi year contracts) or needing to take into account distributors sunk costs. The interim approach only provides certainty till the end of 2006. The distributors are expected to make large investments in 2006 and beyond with **no** certainty that the meter roll out will be provided with exclusivity over the full 15 year cost recovery period proposed by the Victorian Commission.

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The mandatory roll out should provide an opportunity for manufacturers to enhance technology both for the meter asset and different remote reading capabilities. Just as DVD's have overtaken VHS and Beta videos, the technology the distributors use for the mandatory roll out could easily be superseded near the end of the mandated roll out in 5-7 years. Technology bypass or significant meter cost reductions compared to early meter purchase prices could easily render substantial quantities of assets sunk with retailers opting for the latest and greatest technology. UED notes that the Commission has said that sunk assets **should** as opposed to **will** be recoverable within the market. This does not provide certainty that all costs will be taken into account when retailers make their commercial decisions.

The contestability for type 5 remotely read interval meters also has cost recovery impacts as a meter installed in good faith under the mandated roll out is subject to prescribed service charges. As soon as a retailer chooses to add a communication facility, as drafted it appears that the metering charge alters to an excluded service charge which has less certainty of recovery over 15 years than the prescribed service. A further change of retailer could render the asset stranded or re-used in situ as a prescribed service. Given the significant value of the investment and the low return, this appears to offer **no** certainty of complete recovery of the cost over the Commission's proposed 15 year timeframe.

In addition, the changes being developed within the national reform process under the new National Electricity Law (NEL) only require the new national regulator to have due regard for previous regulatory decisions. The legal interpretation for "has due regard to" is unclear and may be interpreted either way. The uncertain legal status of current regulatory decisions in the new regime only serves to add to the uncertainty for the treatment of sunk costs incurred as part of the mandatory roll out. This approach does not meet the objective of best practice regulation.

6. Working to implementation timeframes

The derogation in Victoria which expired on 30 June 2004 has yet to achieve a Final Determination with the ACCC, this may not occur for several months, potentially taking any certainty on the interim extension to mid 2005. UED requests that the ACCC/ Australian Energy Markets Commission (AEMC) commence planning to ensure that a Final Determination on revised Chapter 7 NEC changes which support the Joint Jurisdictional Regulators Review can be finalised prior to the expiration of this current derogation. Such a process will also need to take account of the move to the National Electricity Rules from a voluntary agreement to a statutory set of rules.

The ACCC note that the extension of the derogation until 31 December 2006 is an appropriate timeframe to allow the complexity of these issues to be addressed in the NEC changes. Whilst UED support this view, the ACCC then state that the two years is sufficient timeframe in which to implement NEC changes to respond to the recommendations of the Joint Jurisdictional Regulators Review. We understand that initial consideration by NEMMCO to incorporate first tier metering requirements into the single national metrology procedure may meet this date but any process and IT impacts may not be implemented till sometime in 2007. UED would expect that the revised Chapter 7 of the NEC should have final approval from the ACCC/AEMC by the end of 2006 at best, with an implementation date for the new national metrology procedure potentially coming some time after.

7. Conclusion

UED support the extension of the derogation without the addition of the condition to allow appropriate review of the revised Chapter 7 and metrology changes. UED considers the application of this condition will create uncertainty and pre-empts the wider industry review. Therefore, UED believe that the ACCC should reconsider the Draft Determination and withdraw Clauses 9.9A.1 (c), (d), (e) and (f).