



Compliance Bulletin No. 8

**Confidentiality requirements for energy,
metering and NMI standing data**

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Inquiries about the currency of this compliance bulletin should be addressed to:
Australian Energy Regulator

GPO Box 520
Melbourne Vic 3001
Tel: (03) 9290 1444
Fax: (03) 9290 1457
Email: AERInquiry@aer.gov.au

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Shortened forms

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| AEMC | Australian Energy Market Commission |
| AEMO | Australian Energy Market Operator |
| AER | Australian Energy Regulator |
| AMI | Advanced Metering Installation |
| CATS | Consumer Administration and Transfer Solution |
| DNSP | Distribution Network Service Provider |
| Electricity Law | National Electricity Law |
| Electricity Rules | National Electricity Rules |
| FRMP | Financially Responsible Market Participant |
| HAN | Home area network |
| IHD | In home display |
| MDM | Metering Data Management |
| MSATS | Market Settlement and Transfer Solution |
| NEM | National Electricity Market |
| NMI | National Metering Identifier |
| Retail Rules | National Energy Retail Rules |
| SCER | Standing Committee on Energy and Resources |
| Statement of Approach | AER Enforcement and Compliance - Statement of Approach |
| VEET | Victorian Energy Efficiency Target |

1 Overview

This compliance bulletin highlights two compliance issues pertaining to disclosure of confidential information by participants in the National Electricity Market (NEM). The first is retailers providing agents undertaking customer acquisition activities on their behalf with access to National Metering Identifier (NMI) standing data. The second is distributors providing direct access to energy or metering data to consumers with smart meters.

The Australian Energy Regulator (AER) does not propose to take enforcement action in relation to potential breaches in these areas from 29 June 2012 until 31 December 2013, to provide sufficient time for industry and policy makers to clarify the requirements of the National Electricity Rules (the Electricity Rules) and other energy legislation, or alternatively, for market participants to change their practices. Even though the AER does not intend to take action from 29 June 2012 until 31 December 2013, the AER will, however, closely monitor industry behaviour, and may use its discretion to take any enforcement action it considers appropriate at any time. In particular, it will consider taking action prior to 31 December 2013 if there are other aggravating factors associated with the disclosure of confidential information, such as a significant market impact or breach of privacy.

2 Introduction

The AER aims to work co-operatively with NEM participants to assist them to understand their obligations under the national energy framework and to achieve high levels of compliance. The purpose of this compliance bulletin is to explain the approach that the AER will adopt from 29 June 2012 until 31 December 2013 when monitoring and enforcing compliance with certain requirements of the Electricity Rules regarding access to particular types of confidential information.

Clause 7.7(a) of the Electricity Rules establishes the persons entitled to access or receive certain categories of data, including energy data, metering data and NMI standing data. Other clauses of the Electricity Rules, including clauses 7.7, 7.10 and 8.6.1, set out the obligations of market participants in relation to maintaining the confidentiality of that data. In the AER's view, the purpose of these clauses is to ensure that the security of this data is maintained and to control who has access and how access to data occurs.

2.1 MSATS

In accordance with its requirement to establish and maintain a metering database, the Australian Energy Market Operator (AEMO) operates the Market Settlement and Transfer Solution database (MSATS).

MSATS has four main areas of functionality: Consumer Administration and Transfer Solution (CATS), Wholesale, Interconnectors, Generator and Sample (WIGS), business to business (or B2B) and the Metering Data Management system (MDM). CATS is used to record and update information on connection points used in the settlement of the electricity market. It is also used to handle the process of end users transferring between retailers. The MDM system stores and processes metering data for the purposes of market settlement.

NMI discovery is a function in MSATS that allows prospective retailers to discover sufficient standing data about customers' NMIs to enable them to provide customers with accurate quotes. This data is referred to as NMI standing data.

AEMO provides participant administrator passwords to allow electronic access to MSATS. The rights of access to data held in MSATS is governed by clause 7.7. To assist users in using MSATS, AEMO has published a number of guides, including the MSATS Introduction Guide. The MSATS Introduction Guide is not a procedure within the meaning of the Electricity Rules.

2.2 Smart meters

The primary function of a metering installation is to record and collect energy data. A meter is an integral part of the metering installation.

A smart meter is an interval meter that is capable of remote access to energy data. Smart meters have additional functionality which can include remote connection and disconnection and direct load control. One of the benefits of smart meters is that they enable consumers to monitor their real time electricity consumption.

One of the ways that consumers can access detailed information is through smart meters connecting to a home area network (HAN), which supports the use of devices such as in home displays (IHDs), smart phones and enabled appliances. A HAN is a communication network which enables the transmission of data from the smart meter to secondary devices. An IHD displays the information received from the meter or internet relating to electricity use and price.

Before an IHD can receive data from the meter, the device needs to be registered on the meter. This usually involves receiving a security code to ensure that the IHD is connected to the right meter and to protect the privacy of the data transmitted. Access to energy data or metering data can also be provided through internet interfaces such as web portals.

2.2.1 Policy developments with smart meters

There is currently a significant amount of policy work and consultation occurring on smart meters. Currently, the Standing Committee on Energy and Resources (SCER)¹ is conducting a review on consumer protection and safety arrangements to ensure they remain appropriate where smart meters are rolled out. SCER is considering whether current consumer protection arrangements are appropriate to cover the new products and services enabled by smart meters and whether, and how, the arrangements can be enhanced so that consumers are able to realise the benefit. The Australian Energy Market Commission (AEMC) is also considering smart meter issues in its Power of Choice Review, which is examining demand side participation in the NEM more broadly.

The Victorian Government mandated the roll out of smart meters in 2006. The Advanced Metering Infrastructure (AMI) program saw the installation of smart meters commence in 2010, with the rollout to be completed by the end of 2013. The Victorian Government specified that distribution network service providers (DNSPs) would bear the responsibility for installing smart meters in Victoria. The Victorian Government also operates the Victorian Energy Efficiency Target (VEET) Scheme.² One of the activities that can be undertaken under the VEET is the installation of IHDs. The Victorian Government will be subsidising the cost of IHDs under its VEET scheme.

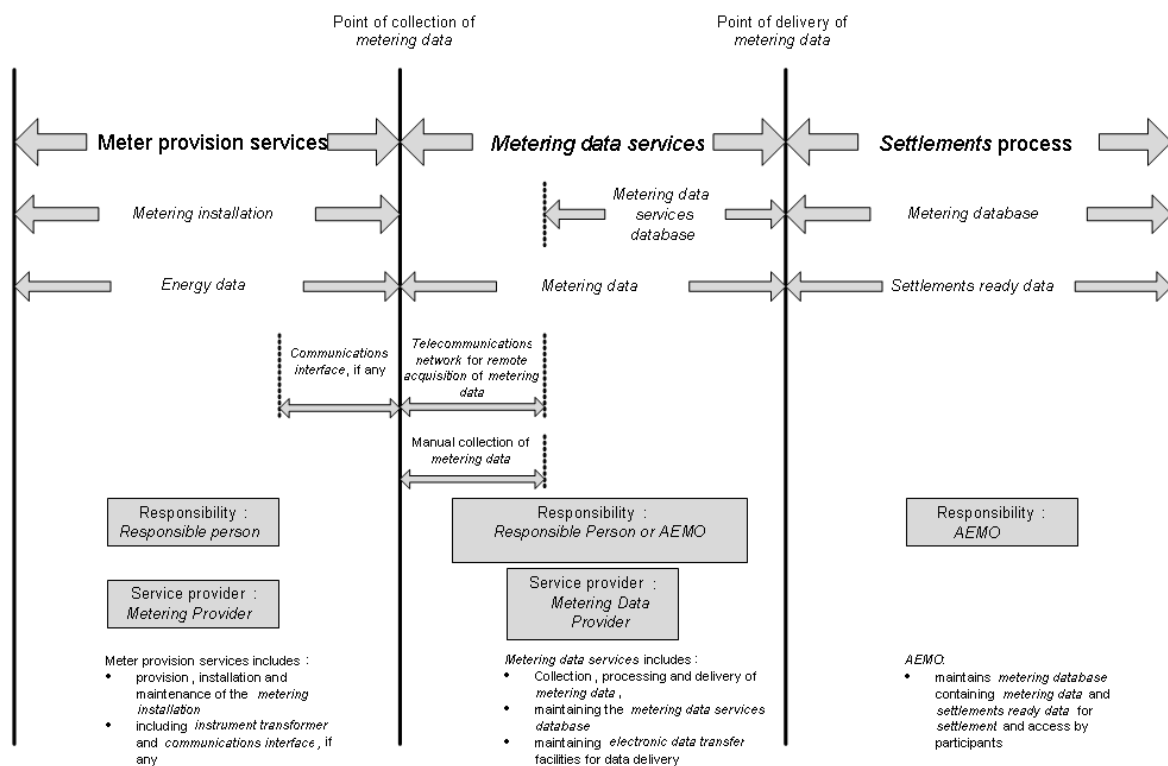
¹ Formerly the Ministerial Council on Energy (MCE).

² The goal of the VEET is to encourage the efficient use of gas and electricity, reduce greenhouse gas emissions and to support industries supplying goods and services that facilitate energy efficiency.

3 Energy, metering and NMI standing data

The Electricity Rules specify various categories of data relating to the production, transmission and consumption of electricity. Energy data and metering data relate to the consumption of electricity, and are high level categories which encompass sub-categories of particular types of data. Energy data is described as being data created by the measurement of the flow of electricity at the metering point and is held in the metering installation. Once energy data is collected from the metering installation, it becomes a type of metering data. The MSATS database holds metering data, as well as other categories of data such as NMI standing data.

The delineation between energy data and metering data is illustrated in Schedule 7.1 of the Electricity Rules as follows:



NMI standing data is not directly related to the consumption of electricity, but rather the connection point at which supply of electricity for consumption occurs. NMI standing data includes a number of information categories including physical location, the applicable network tariff and loss factors associated with the relevant connection point.

4 Regulatory framework

This section describes the roles and functions of the AER and summarises the provisions of the Electricity Rules that are relevant to this compliance bulletin.

4.1 Role and functions of the AER

The AER has functions and powers which include:

- monitoring compliance with the Electricity Law and the Electricity Rules
- investigating breaches or possible breaches of the Electricity Law and the Electricity Rules
- instituting and conducting proceedings in relation to breaches, and appeals from decisions in those proceedings.

In exercising these functions and powers, we work to ensure that:

- our approach is consistent over time
- our processes are cost effective for the AER and relevant participants
- our activities are transparent.

The AER has detailed its methods for compliance and enforcement in the *AER Enforcement and Compliance - Statement of Approach* (Statement of Approach) available on the AER website.³ This document explains our approach to monitoring compliance, how we respond to potential breaches, and how we decide whether to take enforcement action.

4.2 Relevant Rules

This compliance bulletin explains how the AER will monitor and enforce compliance with certain confidentiality requirements of the Electricity Rules.

Clause 7.7(a) sets out those persons entitled to access energy data or to receive metering data, NMI standing data, settlements ready data or data from the metering register for a metering installation. For the purposes of this document, relevant persons are:

- registered participants with a financial interest in the metering installation or the energy measured by the metering installation; and
- a financially responsible market participant's customer upon request by that customer to the financially responsible market participant for information relating to that customer's metering installation.

³ AER, Compliance and Enforcement Statement of Approach, Dec 2010. Available at <http://www.aer.gov.au/node/454>

Clause 7.8.2 requires the responsible person to have appropriate password and security control processes in place to ensure that energy data held in the metering installation is protected from direct local or remote electronic access. A meter provider may only allocate 'read only' passwords to market participants, local network service providers and AEMO. A financially responsible market participant (FRMP) may, in turn, allocate that 'read-only' password to a customer who has sought access to its energy data or metering data in accordance with clause 7.7(a)(7). A FRMP is required to provide its customer with the password within 10 business days, subject to authorisation from the responsible person. The responsible person cannot unreasonably withhold authorisation.

Clause 7.10 provides that passwords, energy data, metering data and NMI standing data, amongst other things, are to be treated as confidential information in accordance with the Electricity Rules. Clause 8.6.1 places obligations on market participants with regard to confidential information. In particular, clauses 8.6.1(b)(1) and 8.6.1(b)(3) provide that registered participants must not disclose confidential information to any persons except as permitted by the Electricity Rules and must not permit unauthorised persons to access confidential information. Clauses 8.6.1(b)(1) and 8.6.1(b)(3) are civil penalty provisions.

Clause 86 of the forthcoming National Energy Retail Rules (Retail Rules) requires distributors to provide end users with information about the end user's energy consumption upon request. The AER considers that clause 86 in the Retail Rules does not override the obligations of distributors pursuant to clauses 7.7(a) and 8.6.1 of the Electricity Rules.

Additional obligations regarding the usage of NMI standing data specified by the jurisdictions are set out in clause 3.13.12 of the Electricity Rules. Currently, the jurisdictions set out what NMI standing data information is displayed to those persons undertaking NMI discovery. From 1 July 2012, a NEM wide NMI Standing Data Schedule will replace certain individual jurisdictional requirements. AEMO has recently finalised its consultation process on the NMI Standing Data Schedule. Clause 3.13.12 and the NMI Standing Data Schedule do not contemplate access by authorised agents of market customers⁴ to NMI standing data.

4.2.1 Access to NMI Standing Data in MSATS

In recent years, there has been a trend for some retailers to outsource certain retail functions (including the seeking and acquisition of new retail customers) which have been traditionally performed in-house. There has also been the development of retail offer comparison and switching services provided by energy brokers. In some instances, retailers have engaged unrelated third parties, including energy brokers, to perform customer acquisition activities on their behalf. These third parties are not registered with AEMO as participants.

NMI standing data is an important tool that retailers use to provide accurate quotes to prospective customers. NMI standing data is accessed through MSATS, which is

⁴ Referred to in this compliance bulletin as retailers.

subject to strict password control by AEMO. A participant will usually be allocated one participant administration user ID and password for MSATS. The participant administration user can then create further user IDs.

The AER is aware that a market participant allocated a portion of its MSATS user IDs to an unrelated third party, who used those IDs to research NMI standing data. The third party was under contract to the market participant to provide customer acquisition services. This third party was not a registered participant.

The third party was not one of the classes of persons entitled to access or receive NMI standing data pursuant to either clause 7.7 or 3.13.12. Accordingly, the AER considers that by providing that third party with passwords to MSATS, and thereby access to NMI standing data, the market participant may not have complied with its obligations under clause 8.6.1.

However, the AER notes that AEMO's MSATS Introduction Guide contemplates the use of MSATS by agents approved by registered participants. It states in the "Who can use MSATS Web Portal" section that registered participants and their agents can use MSATS. Therefore by implication of contemplating use of data by agents, the MSATS Introduction Guide does not reflect the requirements of the Electricity Rules. There is no right under clause 7.7, or related clauses, for registered participants other than AEMO to provide access to energy data, NMI standing data or metering data to authorised agents. In recognition of this inconsistency, AEMO has stated it will be amending the guide in consultation with industry.

4.2.2 Smart meters

One of the purposes of installing smart meters is to provide customers with more detailed information about their consumption patterns. To do so requires the provision of energy or metering data to end users.

The AER considers that the clear intention of the Electricity Rules is to enable end users to access their energy and metering data. Clause 7.7(a)(7) of the Electricity Rules also clearly specifies that end users gain access to that data through a request to the market participant that is financially responsible for that end user's consumption. For the majority of residential and small business customers, this will be their retailer.

The AER is aware that, in addition to their mandated role in the installation of smart meters, some Victorian DNSPs are becoming involved in facilitating access by end users with smart meters to energy or metering data. This will predominantly occur through DNSPs binding HANs and IHDs to smart meters and/or operating web portals. The AER considers that the act of binding HANs or IHDs to smart meters is providing access to energy data. The AER understands that customers using web portals may also be accessing either energy data or metering data.

Although end users are entitled to energy and metering data from their metering installation, the Electricity Rules prescribes that access is to be upon request to the FRMP (as noted above, this is typically the retailer). Notwithstanding the policy intent for end users to access their energy data or metering data, the AER considers that, where the FRMP is not a party to the request, DNSPs are currently at risk of contravening the Electricity Rules by providing end users with access to that data.

5 Monitoring and enforcing compliance

As set out in our Statement of Approach, the AER has regard to each instance of potential non-compliance, including the materiality of the conduct in question when forming a view on what, if any, enforcement action to take.

The AER is concerned that a number of market participants, in particular certain retailers and DNSPs, are or may be at risk of engaging in conduct in breach of the Electricity Rules by not complying with the requirements of clauses 7.7(a) and 8.6.1. However, the AER also recognises that recent market developments in this area aren't reflected in the Electricity Rules.

5.1 MSATS

Where retailers have contracted with third parties via agency arrangements to undertake customer acquisition services, the AER acknowledges that these arrangements may take some time to unwind. Accordingly the AER intends to exercise its discretion to generally not take any enforcement action in relation to retailers that have provided such third parties access to NMI standing data, absent other aggravating factors. This approach will take effect from 29 June 2012 and will be reviewed after 31 December 2013. The AER considers that retailers should use the period to reconsider their business processes. It will also provide AEMO with an opportunity to alter its MSATS Introduction Guide.

5.2 Smart meters

The AER acknowledges that access to energy data and metering data would allow end users to fully capitalise on the benefits of having a smart meter and to more actively manage their consumption of electricity. The AER also recognises that there is a significant amount of policy work being undertaken in this sphere and that the requirements of the Electricity Rules as it currently stands regarding customers' access to energy data and metering data may need to be revised. It appears clear from the Electricity Rules and other policy developments that the intention is for end users to have access to their energy and metering data.

In light of the current policy reviews and the prospect of further changes to the Electricity Rules and/or other energy legislation, the AER does not intend to take action against DNSPs that provide customers with direct access to energy data or metering data without making a request to the FRMP first. However, the AER considers that DNSPs should inform the FRMP on behalf of the customer that access to the relevant data is occurring. This approach will take effect from 29 June 2012 and the AER will reconsider this position after 31 December 2013. This period will give the industry time to clarify the rules framework around customer access to energy and metering data.

The AER notes that the direct provision of access to energy data and metering data to consumers by DNSPs raises a range of issues, including the contestability of such services and how those services are treated under the current revenue framework. These are matters which can be considered further at a policy level. To the extent such services are within the definition of distribution services, they can also be considered

by the AER as part of its regulation of DNSPs under chapter 6 of the Electricity Rules.

The above approach does not diminish the AER's discretion to take any enforcement action it considers appropriate at any time in relation to inappropriate disclosure of confidential information. In particular, where there are other aggravating factors associated with the disclosure of confidential information, such as a significant market impact or breach of privacy, the AER will consider taking enforcement action notwithstanding the current position stated in this compliance bulletin.

The AER would encourage participants to contact the AER if they have concerns or queries about their obligations under the Electricity Rules in this area. The AER will actively monitor participants' behaviour and take appropriate action if necessary.