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Submission to the AEMC's National Energy Retail Amendment (Maintaining life support customer registration when switching) Rule

Draft rule determination

14 January 2021

Response to the draft determination

We welcome the opportunity to respond to the Australian Energy Market Commission's (AEMC) Draft rule determination of the National Energy Retail Amendment (Maintaining life support customer registration when switching).

The AEMC's draft determination is preferable to the current situation where consumers who require life support equipment are required to obtain new medical confirmation every time they switch retailers or move residence.

However, the draft determination is less preferable to the solution proposed by the Energy and Water Ombudsman NSW (EWON), and less preferable than some of the other solutions put forward in response to the Consultation Paper, including the Public Interest Advocacy Centre's (PIAC) proposed solution.

The draft determination:

- maintains barriers to switching retailers for people who require life support equipment;
- is an unfair impost on some of the most vulnerable people in the NEM; and
- leaves unrealised the potential to reduce the risk that people who require life support equipment could inadvertently be removed from the life support register, resulting in serious harm or even death.

The draft determination's proposed solution will still require considerable effort from consumers who require life support equipment to switch retailers and does little to address the risk of vulnerable consumers dropping off the register when they switch. Compared to the proposals put forward by EWON and other stakeholders, this draft rule may appear preferable for retailers and Distribution Network Service Providers (DNSPs), but fails the test of the long term interests of consumers.

Under the draft determination, to switch retailers a consumer who requires life support equipment, and/or their carer, will have to:

- ensure they let their new retailer know they need life support equipment and to be on their life support register;
- be informed by their new retailer they can obtain their medical confirmation form (MCF) and/or medical confirmation document from their previous retailer;
- contact their former retailer and ask for their MCF or medical confirmation document to be sent to them; and
- once they receive their MCF and/or medical confirmation document, physically or electronically post it to their new retailer.

The more complicated this process is, the higher chance there is to get the process wrong, with potentially catastrophic consequences. The draft determination does not sufficiently decrease the risk of people dropping off the register and being disconnected, including people at risk of serious harm – or even death – that could be avoided by a more effective measure.

In their submission to the Consultation Paper, the Australian Energy Regulator (AER) writes, “[s]ince the new life support rules were introduced in 2017 we have seen continued issues with the accuracy of life support registers and timeliness of registration which places

vulnerable consumers at risk. We consider that this is largely due to inadequate compliance systems and processes.” Recent breaches of life support obligations by retailers¹ indicate some retailers have serious problems with their responsibilities towards vulnerable consumers.

The death of Folole Muliaga, in New Zealand in 2007² is a reminder that the consequences of disconnecting people on life support can be as far reaching as they are tragic. If a death occurs in Australia as a result of someone not being on a life support register when they should, a reactive Government response is likely. Compared to the cost to industry of such a response, the cost of EWON’s proposal is probably trivial. Orderly measures that avoid tragedies are preferable to hasty government responses.

Although the AEMC expresses reluctance to have a more thorough review of life support processes in the near future, the recent retailer life support register breaches, the number of life support register issues raised by stakeholders in response to the Consultation Paper, the fast changing nature of the energy market (with more retailers and more switching now than there was in 2017 when the last review was conducted) and the potential for catastrophic consequences necessitates a more thorough review.

Recommendation 1

In 2021 the AEMC undertake a more thorough review of life support processes to consider safety risks and how arrangements unfairly increase the burden of cost or market disadvantage on people with life support equipment needs.

Alternative solutions

We reject the AEMC’s analysis of PIAC’s proposed solution that DNSPs be the only Registered Process Owners (RPOs) and maintain the life support register for their area.

The responses to the Consultation Paper indicate a number of DNSPs are frustrated that life support registers are not properly maintained³. Having the register under DNSPs’ control would ensure they are responsible for maintaining correct and complete registers and are not burdened by the costs of registers inaccurately maintained by others. Having a DNSP/s maintaining a life support register/s was also advocated by a DNSP⁴ and a retailer⁵ in submissions in response to the Consultation Paper.

¹ See: <https://www.aer.gov.au/news-release/alinta-energy-pays-penalties-for-life-support-breaches>, <https://www.aer.gov.au/news-release/court-orders-energyaustralia-to-take-steps-to-comply-with-life-support-undertaking> and <https://www.aer.gov.au/news-release/momentum-energy-pays-penalties-for-alleged-life-support-breaches>.

² <https://www.nzherald.co.nz/nz/my-wife-died-because-of-34-lopaavea-muliaga/WKA24FAGVDY2GQVQSJF3KQMDEI/>

³ At 4.5.2 of the Draft Rule Determination it was noted Energy Networks Australia (ENA), Energy Queensland, Essential Energy, CitiPower, Powercor & United Energy and the Australian Gas Infrastructure Group “considered that RPOs (mostly retailers) have been hesitant to deregister customers in practice” and South Australia Power Networks and ENA “were of the view that a significant growth in customers registered as requiring life support equipment, as well as a large number of life support customers failing to providing medical confirmation, but remaining registered for life support is causing DNSPs significant issues in managing planned and unplanned outage events.”.

⁴ SAPN advocated for a DNSP as a “single contact point” for consumers who require life support.

⁵ Meridian Energy Powershop proposed that a DNSP “be the sole participant responsible for obtaining and maintaining medical confirmation forms”.

In its Draft Rule Determination, the AEMC writes in response to PIAC's proposal, it "is likely to be a lengthy and potentially confusing process for customers, particularly given the role retailers play with respect to the customer relationship". We submit, however, that

- Some consumers already contact their DNSPs to be put on a life support register, and consumers contact their DNSP for faults and emergencies.
- If a consumer contacted their retailer to be put on the life support register, a retailer could simply warm transfer the consumer to the DNSP or pass the information on to them. The DNSP would then be responsible for undertaking the medical confirmation process⁶.
- It is already a confusing arrangement where consumers have a choice of retailers but also have a DNSP, who they cannot choose. This process would be unlikely to add further confusion, and would ensure that they remain safely on the life support register.

The AEMC also writes that "[t]his solution would also negate the benefits customers can receive by contacting a single RPO to deal with their concession and life support registration." We note:

- This appears to be falsely predicated on the idea retailers are a one-stop-shop to obtain concessions and rebates. Consumers in some jurisdictions need to contact their state government and/or other organisations to access concessions or rebates.
- This could be remedied by a requirement that retailers confirm eligibility for the life support register, and hence the life support concession, with the DNSP.
- The AEMC has provided no evidence that people on life support value the benefit of a single RPO over the benefits of only having to register for life support as a once-off.

DNSPs are the entities responsible for disconnection and restoration after outages, and are ultimately responsible for ensuring consumer security and safety. It is reasonable they retain full control of information key to their management of that responsibility and its risks.

Recommendation 2

The AEMC re-consider PIAC's proposed solution of having DNSPs maintain the life support register for their connections.

We tentatively support having a centralised database, with a DNSP as a single point of contact, as put forward by South Australia Power Networks (SAPN) and Meridian Energy Powershop, and recommend the AEMC investigate this further.

Recommendation 3

The AEMC review having a centralised life support database, with a DNSP as a single point of contact.

⁶ A similar process is outlined in Meridian Energy Powershop's submission.

Recommended improvements to the draft determination

Although we do not support the draft determination, if the AEMC chooses to proceed with it, it should be improved in the following ways:

1. Given the permanent nature of most conditions which require the use of life support equipment, if the MCF or medical confirmation document is still legible and a medical professional has not specifically indicated the need for life support equipment is temporary, it should be valid until the person passes away, or until the RPO is informed that life support equipment is no longer required.

Recommendation 4

A MCF or medical confirmation document be valid until the person passes away or the RPO is informed that life support equipment is no longer required as long as it is still legible.

2. At the time of acquiring a new consumer, or when signing existing consumers to a new offer, retailers should check whether a consumer requires life support equipment. This is an important safety check to ensure consumers do not forget to inform their new retailer of their need for life support equipment and people who may have recently started needing life support equipment are included in the register.

Recommendation 5

At the time of acquiring a new consumer, or when signing existing consumers to a new offer, retailers be required to check whether a consumer requires life support equipment.

3. As AGL suggested,⁷ retailers should contact their life support consumers annually to ensure they are on the best available offer for their circumstances. This is already required of retailers in NSW for consumers on rebates.

Recommendation 6

Retailers be required to contact their life support consumers annually to ensure they are on the best available offer for their circumstances.

4. We also support AusNet Services suggestion of “extending the RPO's obligations with respect to the outgoing customer to require the outgoing RPO to retain the customer's life support registration information for the customer or the site for a reasonable amount of time.”⁸ This would be a safety improvement for the draft determination.

Recommendation 7

Outgoing RPOs be required to retain a consumer's life support registration for a reasonable period of time after they leave the RPO.

⁷ See 4.1.1 of the Draft Rule Determination.

⁸ Ibid, 33.

Continued engagement

We would welcome the opportunity to meet with the AEMC and other stakeholders to discuss these issues in more depth.

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