Energy Reform Consulting Pty. Ltd.

(ABN 11 006 144 458)

PO Box 21 / 23 Pitt Street, Ashburton, VIC, 3147

Tel: (0418) 10 22 38 Fax: (03) 9885 2804

9 November 2016

Australian Energy Market Operator
Power of Choice Program
B2B Procedures Consultation team

By email: poc@aemo.com.au

Dear Sir

Re: Power of Choice Procedure Changes (B2B Procedures)

Thank you for the opportunity to comment on the 'Initial Draft Copies of Procedures' issued on 27 October 2016.

We do not intend to comment on the detail of the Procedures. This submission relates to three matters regarding interpretation of the National Electricity Rules: the first relates to the content of the B2B Procedures, the second relates to the parties to whom they apply and the third relates to the ability of B2B Parties to agree to vary B2B Procedures.

Our comments are not directed at the B2B Working Group per se; the matters being raised are more likely to be matters for consideration by the Information Exchange Committee as it considers the making of Information Exchange Committee Recommendations.

Content of B2B Procedures

Introduction

While recognising that the National Electricity Rules (NER) indicate the minimum content (at rule 17.7.3), they do not seem to restrict the content through a rule that specifies content that must not be included [aside from rule 7.17.3(a)(4)].

Similarly, the NER's B2B Factors and B2B Principles do not limit the content of B2B Procedures, but are used to help when specifying content.

Comment

A critical role of B2B Procedures is to enable enforcement of processes or timings by an aggrieved party. This is achieved through NER rule 7.17.1(d), which requires compliance with B2B Procedures; therefore, non-compliance can be escalated to and enforced by the AER.

Consequently, we wish to highlight the importance that the content of B2B Procedures will ensure efficient and predictable outcomes for counterparties of a B2B Communication and must include content that supports this objective, even if it might otherwise be seen as being more appropriately located in the B2B Guide. If such content is omitted, we submit that a key reason for the inclusion of the obligation to comply with B2B Procedures the NER would be undermined.

Selective application of certain obligations in B2B Procedures

Introduction

Rule 17.1.3(d) of the NER specifies that B2B Parties must comply with B2B Procedures, where 'B2B Parties' include Distribution Network Service Providers, retailers, Local Retailers, Metering Coordinators, Metering Providers, Metering Data Providers, Embedded Network Managers and other Third Party B2B Participants.

Rule 17.1.3(e) of the NER allows B2B Parties to agree to "communicate a *B2B Communication* on a basis other than through the *B2B e-Hub*" on the proviso that "the *B2B Communication* is otherwise made in accordance with the *B2B Procedures*".

Combined, these Rules ensure that all B2B Parties must comply with the B2B Procedures.

Comment

The initial draft B2B Procedures use the phrase "The obligations under this clause do not apply to non-regulated businesses" on many occasions. We understand the intent of this provision is to excuse B2B Parties other Distribution Network Service Providers from the provisions of the relevant clauses.

Similarly, we appreciate that such non-application is designed to allow the commercial arrangements that will exist between retailers (and large customers) who appoint Metering Coordinators[1] (who appoint Metering Providers and Metering Data Providers) to prevail.

That said, we query whether the B2B Procedures *can* restrict the scope of the B2B Procedures? Under the NER, can an Information Exchange Committee Recommendation (for a B2B Procedure) restrict the application of that B2B Procedure or parts of the B2B Procedure to a subset of B2B Parties? A test that could be applied to check whether a B2B Procedure's application could be restricted within the B2B Procedure is to ask whether it can limit its application to just parties who agree to use it; we doubt that this could be done. So, how can it limit its application to only certain parties?

Also, does the removal of obligations for "non-regulated businesses" support B2B Principle (a), which states "*B2B Procedures* should provide a uniform approach to *B2B Communications* in *participating jurisdictions*"?

A further issue that should be considered is whether the NER, as written, enables market power to be exerted. Specifically, if a B2B Procedure limits the B2B Parties to whom it applies, could that allow dominant retailers to exert market power? In the absence of another form of B2B Procedure (or, at least, the excised clauses), there is no 'baseline' B2B Procedure that a 'good faith' negotiation would have to accept.

Ability of B2B Parties to vary B2B Procedures

Introduction

We observe that the new rule 7.17.1(f) replaces rule old rule 7.2A.4(k), which stated "*Local Retailers*, *Market Customers* and *Distribution Network Service Providers* may, on such terms and conditions as agreed between them, communicate a *B2B Communication* on a basis other than as set out in the *B2B Procedures*, in which case the parties to the agreement need not comply with the *B2B Procedures* to the extent that the terms and conditions agreed between them are inconsistent with the *B2B Procedures*".

[1] We have ignored the effect on Embedded Network Managers and other Third Party B2B Participants.

A key difference between the new rule 7.17.1(f) and old rule 7.2A.4(k) is that the new rule does not specifically allow parties to agree to interact with anything but the approved B2B Procedures; that is, they are no longer allowed to agree to 'not comply with the B2B Procedures'.

Comment

We contend that the omission of this provision may pose an issue for B2B Parties who want to agree to vary the obligations detailed in the approved B2B Procedures[2] as the new rule does not explicitly allow any B2B Party the flexibility to agree to interact using anything other than the approved B2B Procedures. We are unsure as to the potential impact of this restriction and recommend its impact is assessed and, if deemed necessary, a change to rule 7.17.1(f) may need to be progressed.

Conclusion

This submission raises matters that, as we enter a new era with competitive metering services, we believe require consideration and may result in actions that are designed to help ensure the veracity of the B2B Procedures.

If you have further queries regarding this submission, please do not hesitate to contact me on 0418 10 22 38.

Yours faithfully

PDF version signed

David Lipshut
Director

[2] They may also agree to interact with B2B Communications that by-pass the B2B e-Hub, which is allowed by rule 7.17.1(f).