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Mr Bob Bosler
NEMMCO
Level 22
6-10 O'Connell Street
Sydney NSW 2000

By email: bob_bosler@nemmco.com.au

Dear Mr Bosler

**SUBMISSION TO THE
NATIONAL ELECTRICITY MARKET MANAGEMENT COMPANY
(NEMMCO) DISCUSSION PAPER ON MSATS DATA ISSUES**

1. Background on the CLCV

The Consumer Law Centre Victoria (**CLCV**) welcomes the opportunity to make this submission in response to the National Electricity Market Management Company (**NEMMCO**) Discussion Paper on Market Settlement and Transfer Solution (**MSATS**) Data Issues (the **Discussion Paper**).¹

The CLCV is one of Australia's leading consumer and public interest organisations. A not-for-profit, independent organisation, we undertake research, policy development, advocacy and education. The CLCV's work is focussed on advancing the interests of consumers, particularly low-income and vulnerable consumers. The CLCV is currently working on a range of issues, including utilities, competition and consumer protection policies, financial services, telecommunications, exploitative credit and access to justice. The CLCV also operates a large free consumer legal practice.

2. Introduction

The Discussion Paper invites feedback on data processing and data quality issues identified by NEMMCO and raised by participants and the MSATS data improvement program proposed to deal with these issues. The CLCV is not in a position to respond to

¹ National Electricity Market Management Company, *Discussion Paper: MSATS Data Issues* (October 2005).

all of the issues raised in the Discussion Paper or the entire work program proposed by NEMMCO. Our comments will be of a general nature, as we do not seek to give NEMMCO technical advice on the current data and data processing issues identified in the Discussion Paper.

Our comments are confined to an issue that we have identified as having a particular impact on small end-use consumers of electricity, that is, the effect of altering the timing of MSATS transactions in relation to the initiation of a customer transfer. In our view, this has the potential to result in a customer transfer occurring prior to the expiration of the relevant cooling-off period in the Victoria.

We note that the Discussion Paper refers to the issues identified by the Victorian Essential Services Commission's (the **Commission's**) End-to-End Project Issues Paper (the **E2E Issues Paper**).² In particular, the Discussion Paper refers to the recommendations made by the Commission in relation to altering the timing of MSATS transactions so that a customer transfer may be initiated prior to the expiration of the cooling-off period.

The CLCV is aware that detail surrounding the length and application of cooling-off periods are currently matters for the jurisdictional regulators. For this reason, we have made a submission to the Commission in relation to the E2E Issues Paper, endorsed by the Tenants' Union of Victoria, the Consumer Utilities Advocacy Centre and the Victorian Council of Social Service, which addresses various matters affecting consumers.³ A copy of this submission is also attached for your reference.

In making this submission to NEMMCO, we suggest that any resolution of data issues and changes to procedures must be of benefit to the consumers they affect and not just industry participants in the NEM. We estimate that small end-use customers of electricity would account for more than one third of total consumers in the National Electricity Market.⁴ Therefore, we urge NEMMCO, as the market operator, to be mindful of any negative consequences for consumers that may stem indirectly from NEMMCO's decisions. A further cause for concern is negative consumer perception of full retail competition (**FRC**) that is likely to occur if consumers feel they are losing consumer protections in favour of business efficiency.

Now is particularly sensitive time for the NEM with the introduction of FRC for Queensland and the formulation of a national framework for the regulation of distribution and retailing. At a time of change, consumers will not want to feel that basic protections, such as cooling-off periods in retail energy contracts, are being circumvented by retailers through transfer procedures.

3. Problems attributed to Victorian cooling-off arrangements

It is our understanding, having read the MSATS Paper, that all information required for a customer transfer will be kept as standing data in a central database of the MSATS

² Essential Services Commission, *End to End Transfer Project Issues Paper* (October 2005).

³ Consumer Law Centre Victoria, *Essential Services Commission End To End Project Issues Paper*.

⁴ See: "States pull the plug on national energy plan," *Australian Financial Review* (Tuesday 25 October 2005) at 8.

system. More accurately, it is the Consumer Administration and Transfer Solution (CATS) process and procedures that actually govern consumer transfers.⁵

Consumer transfers appear to involve two sets of communications. Firstly, there is the “customer transfer change request” sent from the proposed new retailer to NEMMCO. Second, the business-to-business (B2B) communications between industry participants such as the current retailer and the proposed new retailer, where these communications are governed by the B2B procedures.

We understand that industry participants have identified differences in time frames that apply to obligations under the MSATS/CAT procedures and obligations under B2B procedures as a significant issue. In the case of inconsistency between the MSATS/CATS procedures and the B2B procedures, the MSATS/CATS procedures prevail to the extent of the inconsistency. In Victoria, clause 4.1 of the Victorian Electricity Customer Transfer Code prevents a retailer from initiating a proposed customer transfer until after the relevant cooling-off period has expired. It appears that these time frame differences, in Victoria at least, are attributable to the fact that customer transfer change requests communicated to NEMMCO constitute an initiation of a proposed transfer and therefore cannot be made until the end of the cooling-off period. Whereas a B2B communication, such as a re-energisation service order, even if sent before a transfer request, from a proposed new retailer to the distributor (associated with the same customer transfer) is not considered an initiation of a proposed transfer.⁶

Industry claim that this can lead to confusion because the current retailer may not be aware that a transfer is in progress, due to the new retailer not having notified NEMMCO of the proposed transfer. It is suggested by industry that the current misalignment and resulting confusion can lead to disconnections in error, and it appears that industry participants are keen to change the MSATS time frames so they align with B2B time frames.⁷ This would, in effect, allow the transfer of a customer before the expiration of the cooling-off period.

4. CLCV’s view of the proposed changes

As noted in our submission to the ESC Issues Paper, there has not been any evidence put forward by industry or the Commission that the time frame differences described in the Discussion Paper and the E2E Issues Paper do, in fact, create a problem resulting in disconnections in error.⁸ The CLCV also considers that it is not possible to support a change to the procedures that would impact on customer cooling-off rights where such evidence has not been provided.

In addition, the CLCV is not convinced by the Commission’s view that the proposed changes would not impact on the capacity of a customer to cancel a contract within the cooling-off period. In our submission to the Commission, the CLCV points to examples of other markets in which unethical businesses have undertaken activities to undermine cooling-off rights. For example, we note an example of a company that sold home

⁵ See clause 6, MSATS Procedures: CATS Procedures, Version 2.42, at 54.

⁶ Essential Services Commission, above, n 2, at 13.

⁷ As above.

⁸ Consumer Law Centre Victoria, above, n 3, at 8.

security alarms, which actively pressured its customers to have an alarm installed prior to the expiry of cooling-off period in order to discourage cancellation of the contract.⁹

If the proposed changes were to occur, CLCV believes that it could be possible for the proposed new retailer to discourage cancellation, either inadvertently, through misunderstanding the MSATS/CATS procedures, or perhaps intentionally, through the application of pressure, by informing the customer that the transfer has gone through, even though the cooling-off period has not yet expired.

We are also of the view that if such a statement was made to a customer, giving the impression that the ability to cancel had been extinguished by the transfer having already been made, that the retailer could be at risk of non-compliance with the provisions prohibiting misleading and deceptive conduct and unconscionable conduct in the *Fair Trading Act 1999* (Vic) and the *Trade Practices Act 1974* (Cth).¹⁰

Indeed, we are of the view that the uncertainty that could be caused for a customer who chose to cool-off could itself lead to disconnection in error.

Finally, we consider that notification at the beginning of the cooling-off period could lead to anti-competitive conduct if the incumbent retailer chooses to contact a customer within the cooling-off period to discourage them from switching retailers.

5. Alternative proposals

We note that some alternative methods of dealing with the issues outlined above have been suggested. For example, the Energy and Water Ombudsman (Victoria) has suggested that it would be more effective if, instead of the new retailer initiating a transfer through a transfer change request, the relevant record in MSATS was flagged as a pending transfer, to enable earlier detection of the transfer by the current retailer.¹¹ Another alternative may be that the B2B transactions associated with a customer transfer not be “initiated” until the cooling-off period has expired. This then would align the time frames in the MSATS/CATS process and the B2B procedures, while at the same time ensuring that the customer’s cooling-off rights are preserved.

If you have any questions in relation to the above comments, please contact me on (03) 9629 6934 (direct) or by email at eliza@clcv.net.au.

Yours faithfully

Eliza Collier
Principal Solicitor

⁹ As above, at 8.

¹⁰ As above, at 9-10.

¹¹ Energy and Water Ombudsman (Victoria), *Submission to the End-to-End Transfer Project Issues Paper* (22 November 2005).