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10 February 2016

John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

Dear Mr Pierce

Re: Submission on National Electricity Amendment - Compliance with dispatch instructions (Draft Determination)

The AER welcomes the opportunity to respond to the AEMC's draft determination concerning the Compliance with dispatch instructions rule change proposal.

We support the AEMC's draft determination. In line with the draft determination, given our compliance and enforcement approach we consider there is a sufficient level of certainty regarding the requirements of 4.9.8(a).

We also agree with the AEMC's conclusion that an assessment of regulatory certainty should be based both on the relevant requirement under the National Electricity Rules and our approach to enforcing them. The AER's *Compliance and Enforcement Statement of Approach* is central to how we exercise our discretion across all of our compliance and enforcement activities. We recognise the importance of a consistent and clear approach; our past activities in this area demonstrate this. We will continue to apply this approach but remain sufficiently flexible to adapt our approach in light of changing legislation, jurisprudence or market conditions.

At the conclusion of this consultation process, the AER proposes to publish an updated 'Compliance with Dispatch Instructions, Offers and Bids' compliance bulletin. For ease of reference we have reattached the draft bulletin contained in our previous submission (October 2015). This revised bulletin is not a fundamental change in our approach but it provides greater clarity around our approach to enforcing the suite of obligations captured by subclauses 4.9.8(a)-(e), along with lessons learnt from our enforcement activities since the bulletin was first published. We consider the draft bulletin will improve participants with a better understanding of our approach to

monitoring compliance with these obligations. Our compliance bulletins should always be read in conjunction with our *Compliance and Enforcement Statement of Approach*.

We also note the AEMC has highlighted the importance of the current obligation with regard to system security and market efficiency outcomes which are in the long term interests of consumers - we agree with these conclusions. As always, the importance of these outcomes will continue to inform our compliance and monitoring activities in this area.

Please contact Peter Adams, General Manager of Wholesale Markets, on (03) 9290 1465 if you would like to discuss any aspect of this submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'P. Conboy', is positioned below the 'Yours sincerely' text.

Paula Conboy
Chair
Australian Energy Regulator



DRAFT

**Compliance with
dispatch instructions,
offers and bids**

Compliance Bulletin No. 1

October 2015

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Amendment Record

Version	Date	Pages
2.0	October 2015	8
1.0	December 2006	3

Shortened forms

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Law	National Electricity Law
NEM	National Electricity Market
Relevant participant	Scheduled Generator, Semi-Scheduled Generator and/or a Market Participant operating in the NEM.
Rules	National Electricity Rules
Statement of Approach	AER Enforcement and Compliance — Statement of Approach

1 Purpose of this compliance bulletin

The Australian Energy Regulator (AER) aims to work co-operatively with National Electricity Market (NEM) participants to help them understand their obligations under the national energy framework and to help them achieve compliance with those obligations. The purpose of this compliance bulletin is to inform market participants of our broad interpretation and enforcement approach when monitoring and enforcing compliance with the National Electricity Rules (Rules) regarding following dispatch instructions issued by the Australian Energy Market Operator (AEMO).

This compliance bulletin is intended to replace our 2006 compliance bulletin and summarise our approach to compliance and enforcement of clause 4.9.8.¹

Our 2006 compliance bulletin was published in response to market events on 31 October 2005 and focused on the relationship between clauses 4.9.8(a) and 3.8.23 of the Rules. This compliance bulletin has a broader focus and captures our approach to the enforcement of subclauses 4.9.8(a)-(e). It also incorporates the outcomes of a recent Federal Court decision related to this provision.² We believe there is value in clarifying our approach to monitoring compliance with, and enforcement of, these provisions to provide greater certainty and predictability for market participants and reduce compliance costs.

2 Regulatory framework

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

2.1 Role and functions of the AER

The AER has functions and powers which include³:

- Monitoring compliance with the National Electricity Law (Law) and the Rules.
- Investigating breaches or possible breaches of the Law and the 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 participants and the AER.
- Our activities are transparent.

¹ <http://www.aer.gov.au/node/1188>

² *Australian Energy Regulator v Snowy Hydro Ltd (No 2)* [2015] FCA 58 (AER v Snowy Hydro)

³ The AER's functions and powers are outlined in Part 3, Section 15 of the National Electricity Law.

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.⁴

2.2 Relevant Rules

Clause 4.9.8 of the Rules outlines the general responsibilities of all registered participants concerning the requirement

- to follow dispatch instructions, and
- to submit offers or bids that generators, loads and scheduled network service providers are able to comply with at all times.

Dispatch instructions in this context are those set out in clauses 4.9.2, 4.9.2A, 4.9.3 and 4.9.3A, which incorporate instructions as to energy output, load reduction, ancillary services provision and certain plant settings.

All subclauses within clause 4.9.8 of the Rules are civil penalty provisions which provide us with the authority to issue an infringement notice carrying an infringement penalty of \$20,000 for each breach by a body corporate.⁵

The AER's enforcement tools also include the ability to accept administrative or enforceable undertakings and commence proceedings in the Federal Court in order to seek civil penalties and declarations in relation to the impugned conduct. The maximum penalty that can be awarded by a court for each breach of a civil penalty provision, including those in clause 4.9.8(a) of the Rules is \$100,000.

2.2.1 Clause 4.9.8

Clause 4.9.8 of the Rules states:

- (a) A *Registered Participant* must comply with a *dispatch instruction* given to it by AEMO unless to do so would, in the *Registered Participant's* reasonable opinion, be a hazard to public safety or materially risk damaging equipment.
- (b) A *Scheduled Generator* must ensure that each of its *scheduled generating units* is at all times able to comply with the latest *generation dispatch offer* under Chapter 3 in respect of that *generating unit*.
- (b1) A *Scheduled Network Service Provider* must ensure that each of its *scheduled network services* is at all times able to comply with the latest *network dispatch offer* under Chapter 3 in respect of that *market network service*.
- (c) A *Registered Participant* must ensure that each of its *facilities* is at all times able to comply with any relevant *dispatch bid* under Chapter 3 in respect of the *facility* (as adjusted by any subsequent restatement of that bid under Chapter 3).

⁴ AER, Compliance and Enforcement – Statement of Approach, April 2014: <http://www.aer.gov.au/node/5876>.

⁵ Section 76 of the National Electricity Law sets out the infringement penalty for a breach of a civil penalty provision is \$4000 for a natural person or \$20 000 for a body corporate.

- (d) A *Market Participant* which has classified a *generating unit* or *load* as an *ancillary service generating unit* or an *ancillary service load*, as the case may be, must ensure that the *ancillary service generating unit* or *ancillary service load* is at all times able to comply with the latest *market ancillary service offer* for the relevant trading interval.
- (e) A *Semi-Scheduled Generator* must ensure that each of its *semi-scheduled generating units* is at all times able to comply with its latest *generation dispatch offer*.

2.2.2 Clause 3.8.23

Clause 3.8.23 of the Rules states:

- (a) If a *scheduled generating unit*, *scheduled network service* or *scheduled load* fails to respond to a *dispatch instruction* within a tolerable time and accuracy (as determined in AEMO's reasonable opinion), then the *scheduled generating unit*, *scheduled network service* or *scheduled load* (as the case may be):
 - (1) is to be declared and identified as non-conforming; and
 - (2) cannot be used as the basis for setting *spot prices*.
- ...
- (e) If a *generating unit*, *scheduled network service* or *scheduled load* (as the case may be) continues to be non-conforming under this clause 3.8.23 after a reasonable period of time, AEMO must prepare a report setting out the details of the non-conformance and forward a copy of the report to the *Scheduled Generator*, *Semi-Scheduled Generator*, *Scheduled Network Service Provider* or *Market Customer* (as the case may be) and the AER.

2.3 The importance of compliance

In the Snowy Hydro judgement, his Honour Justice Beach stated at paragraph 19:⁶

..... Cl 4.9.8(a) of the Rules required that a registered participant must comply with a dispatch instruction given to it by AEMO unless to do so would, in the registered participants reasonable opinion, be a hazard to public safety or materially risk damaging equipment. Compliance with dispatch instructions is necessary to ensure the power system remains secure. AEMO relies upon conformance with dispatch instructions to ensure it can effectively perform its functions as both power system operator and market operator for the NEM”.

Chapter 4 of the Rules provides the framework for achieving and maintaining a secure power system. The requirement for participants to comply with dispatch instructions, as specified in Chapter 4 of the Rules, is essential to the secure operation of the power system. Participants are obligated to follow dispatch instructions issued by AEMO unless to do so would, in the participant's reasonable opinion, be a hazard to public safety or materially risk damaging equipment. Furthermore, the Rules require participant offers and bids to represent the capabilities of their equipment at that time.

⁶ Australian Energy Regulator v Snowy Hydro Limited (No.2) [2015] FCA 58

Under the Rules, AEMO is responsible for the operation and administration of the wholesale electricity market. AEMO coordinates a central dispatch process to manage the spot market, which involves matching generator offers and demand in real time. Every five minutes, AEMO issues dispatch instructions based on participants' bids and offers and system capabilities so that the quantity of electricity produced by generators will meet the demand for electricity at the lowest available cost, while maintaining the technical security of the power system.

Pricing, system security and the overall market integrity of the five minute dispatch cycle relies on market participants accurately representing their capabilities and following dispatch instructions as they are issued. If widespread, failure to follow dispatch instructions can raise system security issues, requiring AEMO to intervene. AEMO must be confident that at all times participants have accurately represented their capabilities and will follow dispatch instructions, other than in the limited circumstances allowed by the Rules. This enables AEMO to assess its security management options based on accurate information, including where necessary, issuing directions to participants. Furthermore participants then have confidence that the market price and dispatch instructions calculated by AEMO result from a process where all participants have provided accurate information to AEMO that appropriately reflects their capability.

Failure to accurately represent capability or follow dispatch instructions distorts market forecasts and outcomes and inevitably affects other registered participants in the NEM. Non-compliance with dispatch instructions can increase the requirement for frequency control ancillary services at a greater market cost. These are costs that are borne by all registered participants, and therefore ultimately by consumers. Not following dispatch instructions can, over time, also result in an increase in the safety margins used by AEMO and network service providers in determining the technical envelope in which the power system can operate, reducing its utilisation and compromising its operation.

2.4 The relationship between clauses 4.9.8(a) and 3.8.23

Chapter 4 of the Rules describes the obligations of participants that operate in the NEM. As outlined above, clause 4.9.8(a) describes the requirement for registered participants to comply with dispatch instructions, as this is fundamental to the secure operation of the power system.

Chapter 3 of the Rules describes the procedures which govern the operation of the market relating to the wholesale trading of electricity and the provision of ancillary services. Rule 3.8 covers spot market operation and clause 3.8.23 places obligations on AEMO to act to ensure it can realign pricing and dispatch outcomes within a tolerable time and accuracy. AEMO has developed and amends, from time to time, procedures for managing failure to conform to dispatch instructions under of the Rules.

Some industry participants are under the misapprehension that clause 4.9.8(a) is automatically satisfied unless they are flagged as non-conforming by AEMO under clause 3.8.23. This is incorrect. The obligation placed on registered participants under clause 4.9.8(a) is a separate and distinct obligation. However, we note that compliance with clause 4.9.8(a) means, by implication, that a market participant cannot be non-conforming under clause 3.8.23.

3 Our compliance and enforcement approach

This section sets out our approach to compliance and enforcement of clause 4.9.8. Whilst this compliance bulletin is primarily aimed at compliance with dispatch instructions and/or offers for energy, it is equally applicable to other types of dispatch instructions.

We do not consider that there is a conflict between achieving compliance with dispatch instructions issued to the same participant for different services, such as energy and frequency control ancillary services (FCAS).

AEMO will only acquire FCAS services from a scheduled generating unit if the scheduled generator has classified one or more of its generating units as an ancillary service generating unit and submitted a market ancillary services offer. AEMO will issue dispatch instructions based on FCAS providers' offers. These instructions will notify a scheduled generator if the generating unit has been enabled for the provision of FCAS during the dispatch interval.

It is possible that the provision of an FCAS service will require a unit to adjust its output at the end of the five minute dispatch interval away from the target output specified in an earlier dispatch instruction. In these circumstances, the prior issued energy dispatch instruction would be qualified to the extent of any inconsistency resulting from a subsequent provision of FCAS (pursuant to the FCAS enablement dispatch instruction).

When assessing compliance with 4.9.8(a), the AER is cognisant of the different types of dispatch instructions issued to market participants (that is, we take into consideration whether the relevant generating unit was providing FCAS when assessing deviations from energy target).

3.1 Subclauses 4.9.8(a)-(e)

AEMO issues dispatch instructions for energy based on a registered participant's offer (including ramp rates) amongst other information. Other dispatch instructions may also be made by AEMO regarding FCAS and changes to plant configuration. The dispatch instructions issued to each generator, load or network service provider are based on their offers or bids. The subclauses of clause 4.9.8 are designed to work together: subclauses 4.9.8(b)-(e) require a participant to provide an offer with which it can comply, thereby promoting compliance with subclause 4.9.8(a).

Subclauses 4.9.8(a)-(e) are separate and distinct obligations which are separately enforceable. For example, a scheduled generator that is at all times able to comply with its latest offer but does not follow a dispatch instruction, where there is no hazard to public safety or a material risk of equipment damage, may satisfy clause 4.9.8(b) but breach clause 4.9.8(a).

Conversely, a scheduled generator that fails to comply with a dispatch instruction because to do so would, in the scheduled generator's reasonable opinion, be a hazard to public safety or materially risk damaging equipment, may be compliant with clause 4.9.8(a). However, despite the existence of a hazard to public safety or a material risk of damaging equipment,

if that scheduled unit was incapable of complying with its latest offer in any case, the scheduled generator may be in breach of clause 4.9.8(b).

3.2 Complying with the current dispatch instruction

Attempts to manage a generating unit's ability to comply with an expected dispatch instruction for a future dispatch interval do not relieve a registered participant of its obligation to comply with a current dispatch instruction issued by AEMO.

The Federal Court accepted the proposition that a generating unit's ability to comply with an expected dispatch instruction for a future dispatch interval could not (of itself and without more) lawfully excuse a failure to comply with a dispatch instruction.⁷ For example, where a registered participant is aware that a unit is deviating from dispatch instructions, immediate steps should be taken to comply. The possibility that such steps may result in future dispatch instructions that require a rapid shut-down and start-up cycle is irrelevant.

In the AER's view, wear and tear on a plant as a result of its operation does not amount to "materially risk damaging equipment" for the purposes of clause 4.9.8(a).⁸ Participants have the ability to limit their exposure to rapid shut-down and start-up cycles through the structure of dispatch offers and by rebidding and should be cognisant of the application of 4.9.8(b) in this regard.

3.3 Compliance with latest generation dispatch offer

Subclauses 4.9.8(b)-(e) of the Rules require that each generator, load and network service provider is at all times able to comply with the latest dispatch offer or bid submitted in respect of that unit, load or facility. There are no qualifications in the application of these subclauses. Given that the NEM operates on a 5-minute basis, the offer of each generator, load or network service provider must be monitored and varied as required to ensure it always complies with the capability of that unit, load or facility as conditions change, and that it rebids where necessary.

AEMO's dispatch engine issues dispatch instructions in accordance with the latest offer or bid submitted in respect of a generator, load or network service provider. An offer or bid must not be submitted in respect of a generator, load or network service provider that cannot be complied with due to the technical and physical limitations of the unit. If the physical or technical limitations of a unit, load or facility change as a result of a change in conditions, the participant should rebid to avoid its latest offer resulting in a dispatch instruction that the unit, load or facility is unable to follow.

⁷ AER v Snowy Hydro. For example, see paragraphs 24 and 171.

⁸ The Federal Court also accepted this view on the factual basis that arose within AER v Snowy Hydro. See paragraphs 65-67, 72-74, 77-79 and 84-90.