



Proposed National Electricity Amendment (Performance Standard Compliance of Generators) Rule 2008

Request for Submissions on a Specific Issue Explanatory Note

18 September 2008

Request for Submissions

The Australian Energy Market Commission (the Commission) invites written submissions and comments from interested parties on a specific issue raised by the National Generator Forum's (NGF) Performance Standard Compliance of Generators Rule change proposal ("the proposal"). Details on this issue are set out below. Submissions should not address any other matter concerning the proposal.

Submissions must be received by **3 October 2008** and should be forwarded to submissions@aemc.gov.au. Submissions must be in accordance with the Commission's Guidelines for making written submissions on Rule Change proposals. Submissions on their cover page should cite the reference **ERC0058**.

Background

On 14 February 2008, the National Generators Forum submitted a Rule change proposal ("the proposal") to the Commission regarding generators' compliance with performance standards. The proposal is primarily in response to the Final Report of the AEMC's Review of Enforcement of and Compliance with Technical Standards (dated 1 September 2006) ("the 2006 Review").

On 26 June 2008, the Commission published its draft Rule determination and draft Rule on the proposal.

On 18 September 2008, the Commission published a Notice under section 107 of the National Electricity Law extending the time period for the Commission to make its final Rule determination and final Rule on this Rule change proposal until 23 October 2008. The Commission considers that a specific issue raised by the proposal is of sufficient complexity to warrant that extension of time.

Specific Issue

The specific issue on which the Commission invites submissions is whether it would be appropriate for the final Rule to incorporate a role and process for the Australian Energy Regulator (AER) to be responsible for accepting or rejecting generators' compliance programs on performance standards (based on Reliability Panel template for generator compliance programs). This role was proposed in the Commission's draft Rule determination on the Rule change proposal, consistent with the Commission's recommendation in its Final Report for the 2006 Review.

In that Report, the Commission recommended the following in relation to the framework for compliance programs:

“5. That the MCE propose a Rule change that would replace the current framework for determining Generator, Market Customer, MNSP and NSP compliance programs with the following:

- *requiring Generators, Market Customers, MNSPs and NSPs to submit a compliance program to the AER that is consistent with the compliance program principles in the Rules and AER compliance program guidelines;*
- *giving the AER, specific power to **accept or reject a compliance program** based on clear requirements for adequate information, the requirements of the Rules and the compliance guidelines;*
- *giving the AER the ability to seek the technical advice of NEMMCO in relation to its decision to **accept or reject a compliance program**; and*
- *requiring the AER to notify the Generator, Market Customer, MNSP or NSP of its decision in writing and give reasons.”*

In the NGF Rule change proposal on performance standard compliance of generators, the NGF noted that the Commission had proposed in the 2006 review that the AER would approve generator compliance plans. The NGF stated that the AER considered that it was inappropriate for them to both approve and then audit compliance with plans. The NGF proposed an alternative approach:

- *“The Reliability Panel, in keeping with their responsibilities to define transmission service standards, approve a template or guideline for generator compliance plans;*
- *The template would be:*
 - *developed with the assistance of participants and NEMMCO;*
 - *effectively define “good industry practice” for the purposes of the Rules;*
 - *allow the AER to audit compliance with the Rules in advance of incidents; and*
 - *allow for improvement in compliance plans based on market experience; and*
- *Generators have an obligation to develop and maintain [compliance] plans using the template.”*

Maintaining its position from the 2006 review, the Commission decided in its draft Rule determination for this Rule change proposal that the AER will be responsible for accepting or rejecting compliance programs. As stated in the 2006 review, the Commission considers that the key objective of this proposal is to ensure effective enforcement.

Implementation of Proposed Role and Process

The proposal for the AER to accept or reject a generator's compliance program could be implemented by means of an amendment to rule 4.15 in the Commission's *Draft National Electricity Amendment (Performance Standards Compliance of Generators) Rule 2008*. The following suggests draft amendments.

Rule 4.15 Performance Standard Compliance

After rule 4.15(ca), insert the following:

- (cb) Within one month of instituting a compliance program in accordance with rule 4.15(b), a *Registered Participant* must submit to the AER a compliance program Proposal which must:
 - (1) be consistent with the *template for generator compliance programs* determined by the *Reliability Panel* under this rule 4.15 as amended from time to time; and
 - (2) be consistent with any other requirement under this rule 4.15.
- (cc) The AER must assess whether a compliance program Proposal, submitted in accordance with rule 4.15(cb), satisfies the requirements of that rule and:

- (1) if the *AER* considers that a compliance program Proposal satisfies the requirements of rule 4.15(cb), the *AER* must make a final decision to accept the compliance program Proposal; or
 - (2) if the *AER* considers that a compliance program Proposal does not satisfy the requirements of rule 4.15(cb), the *AER* must make a draft decision to reject the compliance program Proposal.
- (cd) The *AER* may, in assessing a compliance program Proposal under this rule 4.15, consult with *NEMMCO*.
- (ce) If the *AER*'s draft decision made in accordance with rule 4.15(cc)(2) is to reject a compliance program Proposal, the *AER*'s draft decision must include its reasons and details of the changes required or matters to be addressed before the *AER* will accept the compliance program Proposal.
- (cf) The *AER* must provide written notification to a *Registered Participant* who has submitted a compliance program Proposal in accordance with rule 4.15(cb), of the *AER*'s final decision to accept the compliance program Proposal or the *AER*'s draft decision to reject the compliance program Proposal within 60 *business days* of submission of the compliance program Proposal to the *AER* and in accordance with rule 4.15(cc).
- (cg) If the *AER*'s final decision is to accept a *Registered Participant*'s compliance program Proposal in accordance with rule 4.15(cc), the compliance program Proposal is the compliance program for that *Registered Participant* for the purposes of this rule 4.15.
- (ch) The *AER* must, within seven *business days* of notifying a *Registered Participant* of its draft decision or final decision in accordance with rule 4.15(cf), *publish* the *Registered Participant*'s compliance program Proposal and the *AER*'s draft decision or final decision and its reasons.

Note: The National Electricity Law governs the *AER*'s handling of confidential information.

- (ci) If the *AER* notifies a *Registered Participant* of its draft decision to reject the *Registered Participant*'s compliance program Proposal in accordance with rule 4.15(cf), the *Registered Participant* must submit to the *AER* within 30 *business days* of receipt of the notification, a revised compliance program Proposal which:
- (1) contains revisions to the compliance program Proposal only to the extent of incorporating the substance of any changes required by, or to address matters raised in, the *AER*'s draft decision; and
 - (2) satisfies the requirements of rule 4.15(cb).
- (cj) If the *AER* receives a revised compliance program Proposal in accordance with rule 4.15(ci), the *AER* must assess whether the revised compliance program Proposal satisfies the requirements of rule 4.15(cb) and:
- (1) if the *AER* considers that the revised compliance program Proposal satisfies the requirements of rule 4.15(cb), the *AER* must make a final decision to accept the compliance program Proposal; or
 - (2) if the *AER* considers that the revised compliance program Proposal does not satisfy the requirements of rule 4.15(cb), the *AER* must make a final decision to reject the compliance program Proposal in accordance with rule 4.15(ck).
- (ck) If the *AER*'s final decision is to reject a *Registered Participant*'s revised compliance program Proposal in accordance with rule 4.15(cj)(2), the *AER*'s final decision must include:

- (1) its reasons and details of the changes required or matters to be addressed for the compliance program Proposal to satisfy the requirements of rule 4.15(cb); and
- (2) an amended compliance program which is:
 - (a) determined on the basis of the *Registered Participant's* compliance program Proposal; and
 - (b) amended from that basis only to the extent necessary to enable it to be accepted in accordance with rule 4.15(cb).
- (cl) If the *AER* makes a final decision which includes an amended compliance program based on a *Registered Participant's* compliance program Proposal in accordance with rule 4.15(ck), the amended compliance program is the compliance program for that *Registered Participant* for the purposes of this rule 4.15.
- (cm) The *AER* must provide written notification to a *Registered Participant* who has submitted a revised compliance program Proposal in accordance with rule 4.15(ci), of the *AER's* final decision to accept or reject the revised compliance program Proposal within 60 *business days* of submission of the revised compliance program Proposal to the *AER* and in accordance with rule 4.15(ck).
- (cn) The *AER* must, within seven *business days* of notifying a *Registered Participant* of its final decision in accordance with rule 4.15(cm), *publish* the *Registered Participant's* revised compliance program Proposal and the *AER's* final decision and its reasons.