



National Electricity Amendment (Resolution of existing generator performance standards) Rule 2006 No.21

under the National Electricity Law as applied by:

- (a) the National Electricity (South Australia) Act 1996;
- (b) the Electricity (National Scheme) Act 1997 of the Australian Capital Territory;
- (c) the National Electricity (New South Wales) Act 1997 of New South Wales;
- (d) the Electricity - National Scheme (Queensland) Act 1997 of Queensland;
- (e) the Electricity - National Scheme (Tasmania) Act 1999 of Tasmania;
- (f) the National Electricity (Victoria) Act 2005 of Victoria; and
- (g) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Electricity Law.

A handwritten signature in blue ink, appearing to read 'John Tamblyn', is positioned above the printed name and title.

John Tamblyn
Chairman
Australian Energy Market Commission

National Electricity Amendment (Resolution of existing generator performance standards) Rule 2006 No.21

1. Title of Rule

This Rule is the *National Electricity Amendment (Resolution of existing generator performance standards) Rule 2006 No.21*.

2. Commencement

This Rule commences operation on 7 December 2006.

3. Amendment of the National Electricity Rules

The National Electricity Rules are amended as set out in Schedule 1.

Schedule 1 Amendment of National Electricity Rules

[1] Rule 4.15(b) Performance Standard Compliance

In rule 4.15(b), after the words “as the case may be”, insert “, the registration of the *performance standard* under rule 4.16 or 4.17”.

[2] New rules 4.16 and 4.17

After rule 4.15, insert:

4.16 Transitioning arrangements for establishment of performance standards

4.16.1 Definitions

In this rule 4.16 and in rule 4.17:

actual capability of an eligible plant in respect of a performance requirement means the capability of the eligible plant in relation to that performance requirement when it is being operated under normal conditions in accordance with *good electricity industry practice*.

agreed performance standard means a standard of performance that:

- (a) is established as a result of that standard being accepted by *NEMMCO* in accordance with:
 - (1) rule 4.14(d)(1); or
 - (2) clause 4.14(d)(1) of the National Electricity Code; and
- (b) is in respect of a performance requirement.

deemed performance standard means a standard of performance that:

- (a) is established as a result of it being deemed to apply in accordance with:
 - (1) rule 4.14(h); or
 - (2) clause 4.14(h) of the National Electricity Code; and
- (b) is in respect of a performance requirement.

eligible plant means a *generating unit* (including a pumping generating unit) and *plant* associated with that *generating unit* in relation to which:

- (a) a person was registered as a *Generator* as at the *performance standards commencement date*; or

- (b) a *connection agreement* applied as at the *performance standards commencement date*.

Generator notice means a notice given by a *Generator* to *NEMMCO* in accordance with clause 4.16.3(c).

Generator reply notice means a notice given by a *Generator* to *NEMMCO* in accordance with clause 4.16.3(k).

initiating party has the meaning given to it in clause 4.17.2(a);

mandatory standard means a standard of performance in respect of a performance requirement that is not the subject of a *minimum access standard* or an *automatic access standard*;

National Electricity Code means the code of conduct called the National Electricity Code approved, in accordance with section 6(1) of the Old National Electricity Law, as the initial Code for the purposes of that Law, and as amended from time to time in accordance with its terms and the Old National Electricity Law;

NEMMCO notice means a notice given by *NEMMCO* to a *Generator* in accordance with clause 4.16.3(d);

NEMMCO reply notice means a notice given by *NEMMCO* to a *Generator* in accordance with clause 4.16.3(i);

Old National Electricity Law means the Schedule to the National Electricity (South Australia) Act 1996 (SA) as in force from time to time before the commencement of section 12 of the National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005 (SA);

performance requirement means in the case of:

- (a) any *generating unit* (including a pumping generating unit) and *plant* associated with that *generating unit* – a requirement referred to in clause S5.2.5, S5.2.6, S5.2.8 or S5.2.9; and
- (b) a pumping generating unit and *plant* associated with that pumping generating unit – a requirement referred to in clause S5.3.3, S5.3.5, S5.3.6, S5.3.7 or S5.3.8.

performance standard requirements means the requirements set out in clause 4.16.5(c);

performance standards committee means the committee established by *NEMMCO* under clauses 4.17.1;

performance standards expert means a person engaged by *NEMMCO* under clause 4.17.1(j);

pumping generating unit means a *generating unit* that can also operate as a hydro-electric pump;

receiving party has the meaning given to it in clause 4.17.2(a);

register means the register of *performance standards* established and maintained by *NEMMCO* under rule 4.14(n);

registered performance standard in respect of an eligible plant means a *performance standard* (including any agreed performance standard or deemed performance standard) that is included in the register as being applicable to that eligible plant and that is in respect of a performance requirement.

4.16.2 Exclusions

For the avoidance of doubt:

- (a) this rule 4.16 does not apply in relation to any *performance standard* for an eligible plant where that *performance standard* applies to that eligible plant by virtue of clause 5.3.4A; and
- (b) nothing in this rule 4.16 is to be taken to preclude a *performance standard* that applies to an eligible plant by virtue of those clauses being amended or replaced in accordance with the *Rules*, in which case the *performance standard* as so amended or replaced supersedes the *performance standard* that applies to that eligible plant by virtue of this rule 4.16 or rule 4.17 (as the case may be).

4.16.3 Notification and acceptance of performance standards

Agreement as to performance standards

- (a) *NEMMCO* and a person who is registered as a *Generator* in relation to eligible plant may, at any time before 1 March 2007, agree to a performance standard in respect of a particular performance requirement that is to apply to that eligible plant without following the procedures set out in this clause 4.16.3, but that performance standard must be a standard which, based on the information available to *NEMMCO* at that time, is consistent with the performance standard requirements.
- (b) A performance standard that is agreed under paragraph (a) is to be taken as the *performance standard* in respect of the relevant performance requirement for that eligible plant and *NEMMCO* must forthwith include that standard in the register as the *performance standard* in respect of that performance requirement for that eligible plant.
- (c) If, as at 1 March 2007:
 - (1) *NEMMCO* is not required to include the performance standard in the register under paragraph (b); and
 - (2) *NEMMCO* and the *Generator* have not agreed that no performance standard in respect of the relevant performance requirement is to apply to that eligible plant,

NEMMCO must give a written notice to the *Generator* of its intention to refer the determination of the performance standard to a performance standards expert.

NEMMCO notice

- (d) As soon as reasonably practicable but by no later than 29 December 2006, *NEMMCO* must give to each person who is registered as a *Generator* in relation to any eligible plant a written notice that specifies:
- (1) the registered performance standards that apply to all eligible plants in relation to which that *Generator* is so registered;
 - (2) which of those registered performance standards *NEMMCO* requires the *Generator* to renegotiate under clause 4.16.5(i) and in which case *NEMMCO* must also specify:
 - (i) the *power system security* issue that *NEMMCO* is seeking to address; and
 - (ii) the actual capability of the eligible plant in respect of the performance requirement the subject of the registered performance standard that *NEMMCO* considers is required to address that *power system security* issue; and
 - (3) where:
 - (i) a *performance standard* in respect of a particular performance requirement is not included in the register as being applicable to an eligible plant in relation to which that *Generator* is registered; and
 - (ii) *NEMMCO* considers that a performance standard in respect of that performance requirement should apply to that eligible plant,that performance requirement.

Generator notice

- (e) As soon as reasonably practicable but by no later than 5 January 2007, each person who is registered as a *Generator* in relation to any eligible plant must give to *NEMMCO* a written notice that specifies:
- (1) each deemed performance standard in respect of a performance requirement which the *Generator* proposes as being applicable to any of its eligible plants, where that performance requirement is not the subject of a registered performance standard that applies to that eligible plant;
 - (2) those registered performance standards that apply to any of its eligible plant which the *Generator* requires *NEMMCO* to

renegotiate under clause 4.16.5(k) – in which case the *Generator* must also specify:

- (i) its best assessment of the actual capability of the eligible plant in respect of the performance requirement the subject of the registered performance standard; and
- (ii) the lower performance standard that it is proposing in respect of that performance requirement,

and must include with its notice information that supports its assessment of the actual capability of that eligible plant;

- (3) where *NEMMCO* has given the *Generator* a *NEMMCO* notice that specifies the actual capability of an eligible plant in respect of a performance requirement that *NEMMCO* considers is required to address a *power system security* issue, the *Generator's* best assessment of the actual capability of that eligible plant in respect of that performance requirement – in which case the *Generator* must also include with its notice information that supports its assessment of that actual capability; and

- (4) where:

- (i) *NEMMCO* has given the *Generator* a *NEMMCO* notice that specifies a performance requirement under subparagraph (d)(3); and
- (ii) the *Generator* has not included in its notice a deemed performance standard in respect of that performance requirement that it considers applies to the eligible plant,

the performance standard (if any) that the *Generator* proposes in respect of that performance requirement.

- (f) If:

- (1) the *Generator* does not state in a *Generator* notice that it requires a registered performance standard that applies to an eligible plant to be renegotiated under clause 4.16.5(k), and *NEMMCO* has not specified that standard in a *NEMMCO* notice as a registered performance standard that is to be renegotiated under clause 4.16.5(i), that registered performance standard is to be taken as the *performance standard* in respect of the relevant performance requirement for that eligible plant; or
- (2) the required actual capability of an eligible plant in respect of a performance requirement, as notified to the *Generator* under subparagraph (d)(2), is lower than or equal to the *Generator's* best assessment of the actual capability of that eligible plant in respect of that performance requirement,

then:

- (3) the required actual capability of the eligible plant in respect of that performance requirement, as notified to the *Generator* under subparagraph (d)(2), is to be taken as the *performance standard* in respect of that performance requirement for that eligible plant; and
- (4) *NEMMCO* must forthwith include that standard in the register as the *performance standard* in respect of that performance requirement for that eligible plant.

Provision of connection agreements

(g) Where:

- (1) *NEMMCO* has given the *Generator* a *NEMMCO* notice that specifies the actual capability of an eligible plant in respect of a performance requirement that *NEMMCO* considers is required to address a *power system security* issue and the *performance standard* in respect of that performance requirement is not determined under subparagraphs (f)(2)-(4);
- (2) *NEMMCO* has given the *Generator* a *NEMMCO* notice that specifies a performance requirement under subparagraph (d)(3); or
- (3) a *Generator* gives *NEMMCO* a *Generator* notice that specifies a deemed performance standard under subparagraph (e)(1) or a registered performance standard under subparagraph (e)(2),

and

- (4) the *Generator* has not already provided to *NEMMCO* a copy of the current *connection agreement* that applies to the relevant eligible plant,

then the *Generator* must include with its *Generator* notice or if it does not give *NEMMCO* a *Generator* notice, provide to *NEMMCO* by no later than 5 January 2007, a copy of the current *connection agreement* that applies to the eligible plant.

- (h) The copy of the *connection agreement* referred to in paragraph (g) may be altered in such a way as to mask any commercial arrangements and is *confidential information*.

NEMMCO reply notice

- (i) As soon as reasonably practicable but by no later than the performance standards agreement date, *NEMMCO* must give to each person who is registered as a *Generator* in relation to any eligible plant a written notice that states:
 - (1) where the *Generator* has given *NEMMCO* a *Generator* notice that specifies a deemed performance standard under subparagraph

- (e)(1), whether *NEMMCO* accepts the deemed performance standard as proposed by the *Generator*;
- (2) where the *Generator* has given *NEMMCO* a *Generator* notice that specifies a proposed lower performance standard under subparagraph (e)(2), whether *NEMMCO* accepts:
 - (i) the *Generator*'s assessment of the actual capability of the eligible plant in respect of the performance requirement the subject of the registered performance standard; and/or
 - (ii) the lower performance standard that has been proposed by the *Generator*;
- (3) where:
 - (i) the *Generator* has given *NEMMCO* a *Generator* notice that, under subparagraph (e)(3), specifies the *Generator*'s best assessment of the actual capability of the eligible plant in respect of a performance requirement; and
 - (ii) the required actual capability of the eligible plant in respect of that performance requirement, as notified to the *Generator* under subparagraph (d)(2), is higher than the *Generator*'s assessment of the actual capability referred to in paragraph (1),
whether *NEMMCO* accepts the *Generator*'s assessment;
- (4) where the *Generator* has given *NEMMCO* a *Generator* notice that specifies a proposed performance standard under subparagraph (e)(4), whether *NEMMCO* accepts that performance standard; and
- (5) where *NEMMCO* has given to the *Generator* a *NEMMCO* notice that specifies a performance requirement under subparagraph (d)(3) and the *Generator* has either:
 - (i) not proposed a performance standard under subparagraph (e)(4); or
 - (ii) not given a *Generator* notice to *NEMMCO*,
the performance standard (if any) that *NEMMCO* proposes for that purpose.
- (j) If *NEMMCO* states in a *NEMMCO* reply notice that:
 - (1) it accepts a standard referred to in subparagraph (i)(1), (2) or (4), that standard is to be taken as the *performance standard* in respect of the relevant performance requirement for the eligible plant and *NEMMCO* must forthwith include that standard in the register as the *performance standard* in respect of that performance requirement for that eligible plant; or

- (2) it accepts the *Generator's* assessment of the actual capability of an eligible plant in respect of a performance requirement as included in a *Generator* notice under subparagraph (e)(3),

and the *Generator's* assessment of that actual capability is lower than the required actual capability of the eligible plant in respect of that performance requirement as notified to the *Generator* under subparagraph (d)(2), then:

- (3) the *Generator's* assessment of the actual capability of that eligible plant as referred to above is to be taken as the *performance standard* in respect of that performance requirement for that eligible plant; and
- (4) *NEMMCO* must forthwith include that standard in the register as the *performance standard* in respect of that performance requirement for that eligible plant.

Generator reply notice

- (k) Where *NEMMCO* has given a *Generator* a *NEMMCO* reply notice that specifies a proposed performance standard under subparagraph (i)(5), that *Generator* must, as soon as reasonably practicable but by no later than 15 January 2007, give written notice to *NEMMCO* which states whether it accepts that performance standard.
- (l) If the *Generator* states in a *Generator* reply notice that it accepts a standard referred to in paragraph (k), that standard is to be taken as the *performance standard* in respect of the relevant performance requirement for the eligible plant and *NEMMCO* must forthwith include that standard in the register as the performance standard in respect of that performance requirement for that eligible plant.

4.16.4 Actual capability

- (a) If *NEMMCO* notifies a *Generator* in a *NEMMCO* reply notice that it does not accept that the *Generator's* assessment of the actual capability of an eligible plant in respect of a particular performance requirement, then:
- (1) the *Generator* and *NEMMCO* must seek to agree the actual capability of that eligible plant in respect of that performance requirement, taking into account (among other things) the results of relevant tests, the records of the operation of the plant, engineering reports, information provided by *Network Service Providers*, manufacturers' reports and the specifications of the plant or of similar plant; and
- (2) if, within 20 *business days* of the giving of the *NEMMCO* reply notice, the *Generator* and *NEMMCO* have not agreed the actual capability of that eligible plant in respect of that performance requirement:

- (i) they must seek to agree to the tests or engineering assessments that are to be undertaken for the purpose of establishing that actual capability and the time by which such tests or engineering assessments are to be completed; and
 - (ii) if, within 30 *business days* of the giving of the *NEMMCO* reply notice, they have not agreed to the tests or engineering assessments that are to be undertaken, or the time by which they are to be undertaken, the tests or engineering assessments, and the time by which they are to be undertaken, must be as specified by the *AER* in writing to the *Generator* and *NEMMCO*, such specification to be made at the written request of either the *Generator* or *NEMMCO* within 40 *business days* of the giving of the *NEMMCO* reply notice.
- (b) The *Generator* must use all reasonable endeavours, subject to complying with any other applicable provisions of the *Rules*, to have the tests or engineering assessments agreed or specified under subparagraph (a)(2) undertaken as agreed or specified and must promptly provide the results of such tests or engineering assessments to *NEMMCO*.
- (c) The costs of undertaking the tests or engineering assessments and providing the results to *NEMMCO* as referred to in paragraph (b) must be borne by the *Generator*.
- (d) This clause 4.16.4 does not apply where both the *Generator* and *NEMMCO* agree that there is no need to determine the actual capability of the eligible plant in respect of a particular performance requirement.

4.16.5 Criteria for, and negotiation of, performance standards
Restrictions on NEMMCO regarding performance standards

- (a) *NEMMCO*:
 - (1) must, and must only, accept a deemed performance standard or a proposed performance standard under clause 4.16.3(i)(1), (2) or (4) if it is satisfied that, based on the information available to *NEMMCO* at that time, the standard is consistent with the performance standard requirements;
 - (2) must not propose a performance standard under clause 4.16.3(i)(5) unless it is satisfied that, based on the information available to *NEMMCO* at that time, the standard is consistent with the performance standard requirements,and may only agree to a performance standard under clause 4.16.3(a)-(c) or as described in clause 4.17.3(f) if it is satisfied that, based on the

information available to *NEMMCO* at that time, the standard is consistent with the performance standard requirements.

Preconditions to obligation to negotiate

- (b) If:
- (1) *NEMMCO* does not state in a *NEMMCO* reply notice that it accepts a *Generator's* assessment of the actual capability of an eligible plant in respect of a performance requirement, as referred to in clause 4.16.3(i)(3), and the *Generator* is required to renegotiate the relevant registered performance standard pursuant to paragraph (i);
 - (2) *NEMMCO* does not state in a *NEMMCO* reply notice that it accepts a performance standard proposed by a *Generator*, as referred to in clause 4.16.3(i)(2), and *NEMMCO* is required to renegotiate the relevant registered performance standard pursuant to paragraph (k);
 - (3) *NEMMCO* does not state in a *NEMMCO* reply notice that it accepts a deemed performance standard or a proposed performance standard, as referred to in clause 4.16.3(i)(1) or (4); or
 - (4) a *Generator* does not state in a *Generator* reply notice that it accepts a proposed performance standard, as referred to in clause 4.16.3(k),

NEMMCO and the *Generator* must negotiate in good faith to agree the relevant performance standard in accordance with the performance standard requirements.

Criteria for performance standards

- (c) Subject to paragraphs (e) and (f), a performance standard referred to in paragraph (a) or negotiated in accordance with paragraph (b) must be the least onerous of:
- (1) in the case of a performance standard other than a performance standard referred to in subparagraph (b)(1), the technical characteristics set out in the relevant connection agreement, subject to the technical characteristics set out in any applicable derogation;
 - (2) the relevant *automatic access standard*;
 - (3) the relevant mandatory standard; and
 - (4) the actual capability of the eligible plant in respect of the performance requirement the subject of the performance standard as accepted by *NEMMCO* in a *NEMMCO* reply notice, agreed by *NEMMCO* and the *Generator*, established in accordance with tests or engineering assessments agreed or specified under

clause 4.16.4(a)(2), or determined by a performance standards expert.

- (d) As a result of the application of paragraph (c), and notwithstanding anything else to the contrary in the *Rules*, the relevant performance standard may be less than the relevant *minimum access standard* or mandatory standard.
- (e) The performance standard may be such other standard of performance as is agreed by *NEMMCO* and the *Generator* and as is higher than that which complies with the requirements set out in paragraphs (c) and (d).
- (f) *NEMMCO* and the *Generator* may agree that a performance requirement is not applicable to an eligible plant, with the result that no *performance standard* in respect of that performance requirement is required for that eligible plant.

Provision of information

- (g) For the purpose of facilitating the negotiations referred to in paragraph (b), the *Generator* must provide to *NEMMCO* as soon as reasonably practicable but by no later than 22 January 2007, a copy of the current *connection agreement* that applies to the relevant eligible plant and details of the design performance of the eligible plant.
- (h) The obligation in paragraph (g) does not apply to the extent the *Generator* has already provided such documents and information to *NEMMCO* and the copy of the *connection agreement* may be altered in such a way as to mask any commercial arrangements and is *confidential information*.

When NEMMCO may require renegotiation of registered performance standard

- (i) *NEMMCO* may only require a *Generator* to renegotiate a registered performance standard pursuant to a *NEMMCO* notice if:
 - (1) the registered performance standard is lower than what *NEMMCO* considers, based on the information available to it, to be the actual capability of the eligible plant in respect of the performance requirement the subject of the registered performance standard; and
 - (2) *NEMMCO* is satisfied that a higher performance standard in respect of that performance requirement is required to address a *power system security* issue.
- (j) Notwithstanding paragraph (i), a *Generator* is not required to (but may nevertheless agree to) renegotiate a registered performance standard pursuant to that clause if the actual capability of that eligible plant in respect of the performance requirement as agreed by *NEMMCO* and the *Generator*, or as established in accordance with tests or engineering

assessments agreed or specified under clause 4.16.4(a)(2), is lower than the registered performance standard.

When Generator may require renegotiation of performance standard

- (k) A *Generator* may only require *NEMMCO* to renegotiate a registered performance standard pursuant to a *Generator* notice if the registered performance standard is higher than the *Generator's* best assessment of the actual capability of the eligible plant in respect of the performance requirement the subject of the registered performance standard.
- (l) Notwithstanding paragraph (k), *NEMMCO* is not required to (but may nevertheless agree to) renegotiate a registered performance standard pursuant to that clause if the actual capability of that eligible plant in respect of the performance requirement as agreed by *NEMMCO* and the *Generator*, or as established in accordance with tests or engineering assessments agreed or specified under clause 4.16.4(a)(2), is higher than the registered performance standard.

Consequences of agreeing performance standard

- (m) If *NEMMCO* and a *Generator* agree a performance standard in respect of a performance requirement for any eligible plant under this clause 4.16.5, that performance standard is to be taken as the *performance standard* in respect of that performance requirement for the eligible plant and *NEMMCO* must forthwith include that standard in the register as the performance standard in respect of that performance requirement for that eligible plant.

4.16.6 Consultation with and assistance by Network Service Providers

- (a) Before *NEMMCO*:
 - (1) accepts or agrees to a performance standard under this rule 4.16 or as described in clause 4.17.3(d); or
 - (2) agrees that a performance requirement is not applicable to an eligible plant under clause 4.16.5(f),

NEMMCO must notify the *Network Service Provider* to whose *network* the relevant eligible plant is directly *connected* and give that *Network Service Provider* a reasonable opportunity to provide its views on that matter to *NEMMCO*.

- (b) As soon as reasonably practicable after including a performance standard for an eligible plant in the register under this rule 4.16 or rule 4.17, *NEMMCO* must give written notice of that performance standard to the *Network Service Provider* to whose *network* that eligible plant is directly *connected*.

- (c) If requested to do so by *NEMMCO* or a *Generator*, a *Network Service Provider* must use its reasonable endeavours to provide such assistance as is requested in connection with the proposal, negotiation, acceptance or agreement of a performance standard under this rule 4.16 or as described in clause 4.17.3(d).

4.16.7 Referral to expert determination

- (a) If:
- (1) in accordance with clause 4.16.5(b), *NEMMCO* and a *Generator* are required to negotiate to agree a performance standard in respect of a particular performance requirement for an eligible plant;
 - (2) *NEMMCO* and the *Generator* have not agreed under clause 4.16.5(f) that such a performance requirement is not applicable to that eligible plant; and
 - (3) as at 29 January 2007, *NEMMCO* is not required under clause 4.16.5(m) to include in the register a performance standard for that eligible plant that is in respect of that performance requirement,

the *Generator* may give a written notice to *NEMMCO* (or *NEMMCO* may give a written notice to the *Generator*) of its intention to refer the determination of the performance standard in respect of the performance requirement to a performance standards expert.

- (b) If:
- (1) in accordance with clause 4.16.5(b), *NEMMCO* and a *Generator* are required to negotiate to agree a performance standard in respect of a particular performance requirement for an eligible plant;
 - (2) *NEMMCO* and the *Generator* have not agreed under clause 4.16.5(f) that such a performance requirement is not applicable to that eligible plant; and
 - (3) as at 1 March 2007, *NEMMCO* is not required under clause 4.16.5(m) to include in the register a performance standard for that eligible plant that is in respect of that performance requirement,

NEMMCO must give a written notice to the *Generator* of its intention to refer the determination of the performance standard in respect of the performance requirement to a performance standards expert.

4.16.8 Prior actions

If the *AEMC*, the *AER*, *NEMMCO* or a *Registered Participant* takes any action to enable any entity to perform functions under, or obligations imposed

by, this rule 4.16 or rule 4.17 before 7 December 2006 in anticipation of the relevant provision applying on the performance standards transition commencement date, and the action was taken so far as reasonably practicable in accordance with the provision (as though the provision applied at the time the relevant action was taken), then the action is deemed to have been validly taken in accordance with that provision with effect on and from 7 December 2006.

4.16.9 Deemed performance standards

A deemed performance standard for any eligible plant:

- (a) that is in respect of a particular performance requirement; and
- (b) that is included in the register as at the performance standards transition commencement date,

is to be taken to be the performance standard in respect of that performance requirement for that eligible plant for the purposes of the *Rules* unless it is subsequently amended or replaced in accordance with the *Rules*.

4.16.10 Modification of connection agreements

- (a) Notwithstanding clause 5.2.2(c) and subject to paragraph (b), a *connection agreement* that applies to any eligible plant is to be taken to include:

- (1) such *performance standards* for that eligible plant as are included in the register under this rule 4.16 or rule 4.17; and
- (2) except to the extent they have been superseded by a *performance standard* referred to in subparagraph (1), such *performance standards* for that eligible plant as are included in the register as at the performance standards transition commencement date,

and those *performance standards* prevail over any other standards of performance that are included in that *connection agreement* to the extent of any inconsistency between them.

- (b) Clause 4.16.10(a) does not apply to the extent a *performance standard* that is taken to be included in a *connection agreement* under that clause is subsequently amended or replaced in accordance with the *Rules*.

4.17 Expert determination

4.17.1 Performance standards committee and appointment of performance standards experts

- (a) As soon as reasonably practicable but by no later than 10 January 2007, *NEMMCO* must establish a committee comprising six members (the '**performance standards committee**').
- (b) The six members must consist of:

- (1) two persons appointed to represent *NEMMCO*, one of whom is appointed as the chairperson of the committee;
 - (2) two persons appointed to represent *Generators*; and
 - (3) two persons appointed to represent *Network Service Providers*.
- (c) A decision of the performance standards committee to nominate a person as a performance standards expert must be made:
- (1) at a meeting of the performance standards committee; and
 - (2) by at least two thirds of the number of members who attend the meeting.
- (d) A quorum for a meeting of the performance standards committee consists of one member from each of the categories referred to in subparagraph (b)(1) to (3).
- (e) The chairperson of the performance standards committee:
- (1) is responsible for all procedural matters; and
 - (2) without limiting subparagraph (1), may determine that a member or members may participate in, and form any part of the quorum for, a meeting of the performance standards committee by telephone, closed circuit television or other means, but only if the member who speaks on any matter at that meeting can be heard by the other members at that meeting.
- (f) If a member of the performance standards committee resigns or otherwise ceases to be able or available to perform the functions of a member for more than 2 consecutive meetings of the committee, *NEMMCO* must, as soon as reasonably practicable, appoint another person to replace that member.
- (g) As soon as reasonably practicable after it is established, the performance standards committee must nominate at least two persons as performance standards experts.
- (h) The performance standards committee must:
- (1) from time to time nominate such number of persons as performance standards experts as is necessary to ensure that the number of performance standards experts at any time is no less than two; and
 - (2) at the request of *NEMMCO*, nominate such additional number of persons as performance standards experts as *NEMMCO* requires.
- (i) If the performance standards committee:
- (1) fails to nominate at least two persons as performance standards experts within 30 *business days* of the committee being established; or

- (2) where the number of performance standards experts is reduced to less than two – fails, within 30 *business days* of such reduction occurring, to nominate such number of persons as performance standards experts as is necessary to restore the number of performance standards experts to two,

NEMMCO must request the *AER* in writing to nominate the requisite number of persons as performance standards experts and the *AER* must nominate that number of performance standards experts as soon as reasonably practicable.

- (j) *NEMMCO* must engage a performance standards expert nominated under this clause 4.17.1 for the purpose of performing the functions of a performance standards expert under this rule 4.17.
- (k) *NEMMCO* must notify the *AER* in writing of each performance standards expert that it engages under paragraph (j).
- (l) The performance standards committee will cease to exist one month after 1 June 2007.

4.17.2 Referral to performance standards expert

- (a) Where *NEMMCO* or a *Generator* gives a notice under clause 4.16.3(c) or clause 4.16.7 of its intention to refer the determination of a performance standard to a performance standards expert, the party giving the notice (the '**initiating party**') and the party to whom the notice is given (the '**receiving party**') must seek to agree on a performance standards expert to determine the performance standard.
- (b) If:
- (1) 5 *business days* from the giving of the notice under clause 4.16.3(c) or clause 4.16.7 (as the case may be) have elapsed; and
 - (2) the initiating party and the receiving party have not agreed on a performance standards expert to determine the performance standard,
- then the initiating party or the receiving party may request the *AER* in writing to nominate a performance standards expert to determine the performance standard, in which case:
- (3) the *AER* must make such nomination by notice in writing given to both the initiating party and the receiving party within 5 *business days* of the *AER* receiving the request to do so; and
 - (4) the nominated performance standards expert will determine the performance standard.
- (c) Within 5 *business days* of the selection of the performance standards expert who will determine the performance standard, or within such longer time as the performance standards expert may agree, the

initiating party and the receiving party must each give to the performance standards expert a written submission as to the performance standard they contend should be adopted and the reasons (together with supporting evidence) for that contention.

4.17.3 Determinations of performance standards experts

- (a) The initiating party, the receiving party and any *Network Service Provider* required to do so by the performance standards expert must promptly supply the performance standards expert with any information, assistance and cooperation requested in writing by the performance standards expert in connection with its determination of a performance standard.
- (b) The performance standards expert must determine the performance standard in accordance with the performance standard requirements. For these purposes the performance standards expert may, without limitation:
 - (1) determine the actual capability of the eligible plant in respect of the performance requirement the subject of the performance standard; or
 - (2) determine that a performance requirement is not applicable to the relevant eligible plant, with the result that no performance standard in respect of that performance requirement is required for that eligible plant.
- (c) The performance standards expert must, as soon as reasonably practicable but no later than 1 June 2007, determine the performance standard and provide *NEMMCO* and the *Generator* with its written determination (including reasons).
- (d) The performance standards expert must not determine a performance standard in respect of a performance requirement for an eligible plant if, prior to making that determination, *NEMMCO* and the *Generator* notify the expert in writing that they have agreed to the relevant performance standard.
- (e) A performance standard in respect of a particular performance requirement that is:
 - (1) agreed as described in paragraph (d); or
 - (2) determined by a performance standards expert,is to be taken as the performance standard in respect of that performance requirement for the relevant eligible plant and *NEMMCO* must forthwith include that standard in the register as the *performance standard* in respect of that performance requirement for that eligible plant.

- (f) Not later than 1 July 2007, a performance standards expert must provide a summary of each determination it makes under this rule 4.17 to *NEMMCO* and *NEMMCO* must *publish* that summary as soon as is reasonably practicable.
- (g) A summary under paragraph (f) must only include the following information:
 - (1) the name of the relevant *Generator*;
 - (2) the name or a description of the eligible plant; and
 - (3) the performance requirement that is the subject of the performance standard that has been determined by the performance standards expert for that eligible plant.

4.17.4 Other matters

- (a) To the extent permitted by law, a performance standards expert is not liable for any loss, damage or liability suffered or incurred by a *Registered Participant* or any other person as a consequence of any act or omission of the performance standards expert that was done in good faith in connection with the determination of a performance standard.
- (b) Before proceeding to determine a performance standard, a performance standards expert may require the initiating party and the receiving party to execute a release and indemnity in relation to any loss, damage or liability that the performance standards expert might, but for the release and indemnity, suffer or incur as a consequence of any act or omission of the performance standards expert that was done in good faith in connection with the determination of the performance standard.
- (c) As part of its engagement by *NEMMCO*, a performance standards expert must enter into a confidentiality deed with *NEMMCO*, for the benefit of *NEMMCO* and each *Generator* in respect of which the performance standards expert determines a performance standard, under which it undertakes to keep confidential all information provided to it for the purposes of determining any performance standard except to the extent that the disclosure of such information is necessary for the purposes of the summary referred to in clause 4.17.3(f).
- (d) The costs of the performance standards expert must be borne equally as between *NEMMCO* and National Generators Forum Limited (ACN 113 331 623).

[3] Clause 5.2.5 Obligations of generators

Omit clause 5.2.5(a) and substitute:

- (a) A *Generator* must plan and design its *facilities* and ensure that they are operated to comply with:
 - (1) the *performance standards* applicable to those *facilities*;
 - (2) subject to subparagraph (1), the *connection agreement* that applies to those *facilities*; and
 - (3) subject to subparagraph (2), the *system standards*.

[4] Chapter 10 Substituted Definition

Omit the definition of **performance standard** and substitute:

performance standard

A standard of performance that:

- (a) is established as a result of it being:
 - (1) accepted by *NEMMCO* in accordance with rule 4.14(d)(1);
 - (2) taken to be an applicable performance standard in accordance with clause 5.3.4A(g);
 - (3) deemed to apply in accordance with rule 4.14(h); or
 - (4) determined pursuant to rule 4.14(m); or
 - (b) is included in the register of *performance standards* established and maintained by *NEMMCO* under rule 4.14(n),
as the case may be.
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