

11 February 2016

Andrew Pirie
Senior Advisor
Australian Energy Markets Commission
Submitted via AEMC website – ERC0187

Dear Andrew,

RE: Compliance with Dispatch Instructions

Stanwell welcomes the opportunity to provide comment on the Compliance with Dispatch Instructions Draft Determination (Draft Determination).

Stanwell does not consider that the Draft Determination is good regulatory practice in that it retains drafting of a rule which creates a large number of technical breaches in instances which are not blameworthy and relies heavily on the discretion of the Regulator in determining whether to pursue these breaches and to what extent.

Stanwell believes that the NEO is best served by the AEMC writing the best rules possible *and* the AER exercising discretion in their enforcement. Such rules may include guidance or bounds to the regulator's - or court's - discretion, as seen in the recent Final Determination on *Bidding in Good Faith*¹.

As indicated in our response to the Compliance with Dispatch Instructions Consultation Paper, Stanwell considers that it is crucial to the wholesale electricity market that participants make a genuine attempt to meet their dispatch targets. The issue under debate is whether minor technical non-compliance with dispatch instructions which occur despite genuine attempts to comply should place Market Participants at risk of significant financial and reputational penalties.

While the approach of the regulator to date has resulted in only three infringement notices and one legal proceeding², the stated approach of the regulator continues to evolve. For example, the AER response to the Consultation Paper contains an updated draft Compliance Bulletin which no longer states their acceptance that strict compliance with every dispatch instruction is impossible. With further evidence of the regulator's evolving approach, the Commission should not rely on the (non binding) enforcement approach of the regulator at a particular point in time.

Stanwell proposed the inclusion of a legal 'safe harbour' in our earlier response for generators which have their control system in Automatic Governor Control (AGC) with an appropriate frequency response profile. The response of a generating unit in such a state will provide the best practicable compliance with dispatch targets.

¹ AEMC 2015, *Bidding in Good Faith*, Final Rule Determination, 10 December 2015, Sydney. Clause 3.8.22A(e) provides statutory guidance to the court in regards to issues it *must* consider in interpreting clause 3.8.22A(d).

² Draft Determination, executive summary, page iii

Stanwell would expect the specific wording of such a safe harbour to be consistent with the outcome of the AER v Snowy Hydro court case where:

*The Federal Court declared seven of the contraventions resulted from Snowy Hydro's failure to afford sufficient importance to compliance with AEMO's dispatch instructions. One contravention resulted from insufficient attention and importance being given to the instructions. The other resulted from a unit being adversely affected by an undiagnosed control system fault at another generating unit.*³

Alternative approaches would be to include guidance in the rules as to what must be considered when determining compliance, or what must be contained in AER guidelines. Under either approach, Stanwell would expect the rules to confirm the guidance previously provided by the AER, namely that strict compliance with all dispatch instructions is a physical impossibility, but that participants are required to attempt to comply with each instruction.

Stanwell encourages the Commission to revise the current rules in order to provide certainty for market participants that they do not need to rely on the evolving discretion of the regulator in whether they will be pursued for minor technical breaches.

If you would like to discuss any aspect of this submission, please contact me on 07 3228 4529.

Regards



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Energy Trading and Commercial Strategy

³ AER State of the Energy Market 2015, page 57