

25 July 2006

Our Ref: M2006/158  
Your Ref: 12468  
Contact Officer: Paul Dunn  
Contact Phone: 03-9290-1426

Dr John Tamblyn  
Chairman  
Australian Energy Market Commission  
PO Box H166  
Australia Square NSW 1215

*John*

Dear Dr ~~Tamblyn~~,

**AEMC Review of Enforcement of, and Compliance with Technical Standards**

Thank you for the opportunity to comment upon the report. We note that a great many of the matters raised by the AER in our submission have received detailed consideration by the Commission and we regard the report as a significant step forward in a number of areas.

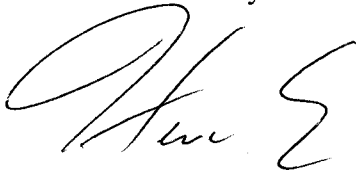
Our mutual concern over the incomplete and inaccurate registration of generation plant performance standards is well captured by the report. We strongly support your recommendation to the MCE that the first priority is to put in place a process to resolve the missing and incorrect performance standards data recorded by NEMMCO. In particular we support the imposition of a firm deadline of 30 June 2007 to complete the process.

It is comforting to note that Industry and NEMMCO have committed to work expeditiously towards a solution and that the NGF and NEMMCO have jointly determined a transition process to register the actual capability of all generators and to ensure all compliance programs are in place for those generators by 30 June 2007. In view of the failure of the previous process to appropriately register performance standards and the need to ensure that the industry gives this further opportunity to register correct data the uppermost priority, I think it important that the process (which of necessity includes a Rule Change proposal) continues to be subject to appropriate oversight by staff of both the AER and the AEMC. The AER has separately written to the NGF, NEMMCO and the network service providers, advising them of our approach to enforcement during the transition period. A copy of those letters has also been provided to the AEMC and is attached for reference.

On the matter of penalties we accept your conclusion that whilst the current situation remains it is not appropriate for the AEMC to conclusively recommend an increase in penalties for breaches of technical standards. However, as you are aware from our submission to the issues paper the AER considers the current penalty regime is inadequate. We look forward to discussing this with you further as part of the next stage of your review

We note that you propose a further review that will consider both this question and the question of whether breaches of technical standards should move from strict liability to fault-based liability. The AER maintains a substantial interest in ensuring the enforcement regime is fair, effective and efficient and will seek to actively participate in the development of changes to enhance the current regime. We look forward to continuing to work closely with the AEMC in that regard.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Steve Edwell', written in a cursive style.

Steve Edwell  
Chairman  
Australian Energy Regulator

Our Ref: M2006/158  
Contact Officer: Mark Wilson  
Contact Phone: 08 8213 3419

25 July 2006

Mr John Boshier  
Executive Director  
National Generators Forum  
Level 11, 60 Marcus Clarke St.  
Canberra ACT 2601

Dear John,

**Registered generator technical performance standards – Transition process**

In April, the Chairman of the AER wrote to NEMMCO, the NGF and the AEMC expressing significant concerns regarding Generator Technical Performance Standards. It is pleasing to see the progress since then by industry and NEMMCO towards a pragmatic solution in relation to those incumbent generators whose current registered performance standards are incomplete.

The AER understands the intention of this transition process is to register the actual capability of all generators and to ensure all compliance programs are in place for those generators by 30 June 2007. We understand that this process requires some changes to the Rules that will take some time to come into effect. In order for this process to be completed on time, and until those changes are approved, parties have committed to act as if the proposed Rules are in place. The AER is also committed to this process, and encourages industry and NEMMCO to work expeditiously towards a solution by June 2007. The AER expects to continue to be kept informed of developments on this matter.

The AER recognises that there are currently generators who are not fully compliant with the Rules, due to the lack of registered performance standards and related compliance programs, and that the transition process is intended to address this issue. The AER is responsible for enforcement of the Rules, but has discretion as to whether action is appropriate in any given case. The AER's standard practice when considering enforcement proceedings is to take into account all relevant facts including:

- (a) the nature and extent of the breach;
- (b) the nature and extent of any loss or damage suffered as a result of the breach;

- (c) the circumstances in which the breach took place; and
- (d) whether the relevant participant has engaged in any similar conduct and been found to be in breach of a provision of the National Electricity Rules, the National Electricity Law or the Regulations in respect of that conduct.

With regard to the specific obligations on generators to meet their registered performance standards, the rules also require that the effectiveness of a compliance regime be taken into consideration in any proceedings for a breach of clause 4.15(a).

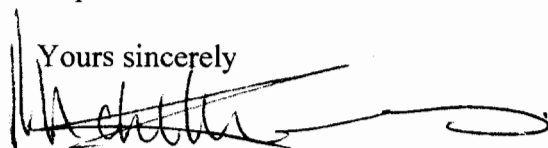
Prior to 30 June 2007, the AER will also take into account this transition process, its objectives, and the role of participants in that process. In order to facilitate this process, the AER will refrain from issuing an infringement notice or instituting proceedings seeking a civil penalty with respect to technical breaches of the Rules relating to the establishment and registration of performance standards and related compliance programs.

The AER does, however, reserve its right to issue an infringement notice or to institute proceedings seeking a civil penalty with respect to any significant breach of these Rules, in particular, where plant has been operated in such a way as to cause a material adverse affect on power system security or loss or damage to any person. The AER also reserves its right to institute proceedings seeking other remedies, (including an injunction or order for disconnection) in any case where it considers it appropriate to do so.

Following the period of transition, (that is from 1 July 2007), the AER will refocus its compliance monitoring plans on the technical performance of generators and Network Service Providers. It is critical, therefore, to ensure that generators, NEMMCO and NSPs work together to deliver effective and high quality performance standards within the transition time frame. This will ensure going forward the national electricity market continues to deliver with respect to both the technical performance of generators and the network, and security of supply to end users.

As always, I am very happy to discuss this matter with you and the industry if that would be helpful.

Yours sincerely



Michelle Groves  
Chief Executive  
Australian Energy Regulator

CC: Mr John Ryan  
Chair, MCE Standing Committee of Officials

Dr John Tamblyn, Chairman  
Australian Energy Market Commission

Mr Les Hosking, Managing Director  
NEMMCO

Chief executives of all Network Service Providers

Our Ref: M2006/158  
Contact Officer: Mark Wilson  
Contact Phone: 08 8213 3419

25 July 2006

Mr Ian Stirling  
Chief Executive Officer  
ElectraNet Pty Ltd  
52-55 East Terrace  
Rymill Park SA 5000

Dear Mr Stirling,

**Registered generator technical performance standards – Transition process**

The purpose of this letter is to seek the support of all Network Service Providers in the resolution of incomplete technical performance standards for generator plant.

Attached is a copy of a letter to the National Generators Forum regarding Generator Technical Performance Standards. That letter outlines the recent progress made by industry and NEMMCO to address the significant issue of certain incumbent generators having either incomplete or incorrect registered performance standards.

By way of background, the technical standards regime, which began with an industry-wide review in 2000, was designed to ensure the continued security and integrity of the power system by establishing and registering clearly-defined standards for the performance of the overall power system. The new arrangements came into effect in November 2003. There followed a grace period, until December 2004, for existing generators to formalise with both NEMMCO and their respective network service providers the terms of their existing arrangements for access to the network. By the end of that period, market participants were required to reflect the outcome of that process in specific performance standards which were then registered with NEMMCO. The new regime was designed to impose no new obligations upon existing plant, with the performance of existing plant “grandfathered”.

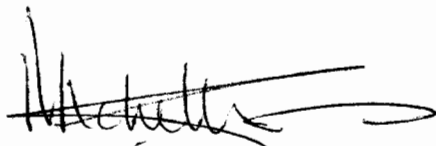
The purpose of registering performance standards and the requirement for generators to adhere to these standards is to enable NEMMCO to understand the capability of all power system plant and so manage the power system in order to prevent the power system cascading into an uncontrolled collapse. All parties (generators, customers and network service providers) rely upon the system staying within given standards for their own needs and to avoid equipment damage. In that sense, all parties have an interest in contributing to meeting those objectives.

Earlier this year the AER became aware that there are a large number of generators whose current registered performance standards are either incomplete or incorrect. Since then, the NGF and NEMMCO have jointly determined a transition process to register the actual capability of all generators and to ensure all compliance programs are in place for those generators by 30 June 2007. Industry and NEMMCO have committed to work expeditiously towards a solution.

Network service providers also have a role in this process, particularly in the provision of information regarding the actual capability of generators. I urge you to work together with generators and NEMMCO to assist in the delivery of effective and high quality performance standards.

As always, I am very happy to discuss this matter with you if that would be helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michelle Groves', with a long horizontal flourish extending to the right.

Michelle Groves  
Chief Executive  
Australian Energy Regulator