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Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Lodged online: www.aemc.gov.au

Rule change request – Compliance with dispatch instructions

The Energy Supply Association of Australia (esaa) welcomes the opportunity to make a submission to the Australian Energy Market Commission's (AEMC) consultation paper on Compliance with dispatch instructions.

The esaa is the peak industry body for the stationary energy sector in Australia and represents the policy positions of the Chief Executives of 34 electricity and downstream natural gas businesses. These businesses own and operate some \$120 billion in assets, employ more than 59,000 people and contribute \$24.1 billion directly to the nation's Gross Domestic Product.

As noted in the consultation paper, there is no lawful excuse for not complying with the obligation to meet dispatch instruction outside of clause 4.9.8(a). The obligation in the clause is framed narrowly, only allowing deviation from dispatch instructions if "a participant had a reasonable opinion that compliance with the terms of the dispatch instructions would create a hazard to public safety or material risk damaging equipment." While the provision is framed in a narrow way, the Australian Energy Regulator (AER) has discretion over enforcement. To date the AER has only pursued a few breaches of the obligation.

Based on previous AER guidance and the Australian Energy Market Operator (AEMO) procedures, it would appear both institutions envisage variations of some degree from dispatch instructions. For example, in their 2006 guidance the AER stated:

While Registered Participants must endeavour to comply with dispatch instructions, the AER recognises that exact compliance with dispatch instructions in every dispatch interval is a physical impossibility. Accordingly, the AER does not intend to pursue a breach of clause 4.9.8(a) with respect to minor departures from dispatch instructions that occur despite the best endeavours of a Registered Participant to comply.¹

In the industry's view, having a narrowly defined obligation and relying on the discretion of the AER is not the best approach to manage the vagaries of the physical power supply system. Explicitly acknowledging transient limitations of plant in the rules, by changing the strict obligation to a form that encompasses the concept of reasonable endeavours, would represent a better approach.

¹ AER: Compliance Bulletin No. 1 - Complying with dispatch instructions, December 2006.

The explicit statement in the previous AER guidance of 2006 that they would not interpret the provision in an absolute sense, provided comfort to industry participants. While the new AER guidance² still sets a framework for how the AER will use its discretion with respect to enforcement, there isn't the same level of comfort as with the 2006 guidance. On 14 May 2015 the AER released a compliance report³, explaining its approach to the requirements of clause 4.9.8. In this report, no longer did the AER refer to the 'endeavouring to comply with dispatch instructions' as in the 2006 guidance. This report explains the need for updated guidance on clause 4.9.8.

Confidence on part of generators that they will not face enforcement and penalties for a variation they undertook in good faith due to physical issues etc. is a form of regulatory certainty. While this is just one of many types of risks investors face, taking steps to provide regulatory certainty, within reason, is good for timely investment and more likely to produce lower costs. This in turn is likely to feed through to lower prices.

The rule change seeks to have the rules reflect the fact that when operating plant there will always be a range of factors that affects a generator's output at the margins. There is no single best approach to frame the obligation, but given the importance of complying with dispatch instructions it will inevitably still need to be relatively narrow.

Any questions about our submission should be addressed to Fergus Pope, by email to fergus.pope@esaa.com.au or by telephone on (03) 9205 3107.

Yours sincerely



Kieran Donoghue
General Manager, Policy

² AER: Compliance and Enforcement Statement of Approach, April 2014.

³ Quarterly Compliance Report: January-March 2015.