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4 September 2006

Dr. John Tamblyn  
Chairman  
Australian Energy Market Commission  
Level 16, 1 Margaret Street  
SYDNEY NSW 2000

Dear Dr. Tamblyn,

**Request for a Rule change to establish transitional arrangements for the establishment of performance standards**

The National Generators Forum (NGF), with the support of the National Electricity Market Management Company (NEMMCO), requests the making of a new Rule. The Rule is to establish new transitional arrangements for completing performance standards for generating units that were connected, or in the process of connecting, at the date the current regime for performance standards came into force in their region.

***Person requesting for the Rule***

The National Generators Forum, ABN 83 113 331 623, requests the making of this Rule. The address for notices is GPO Box 1301, Canberra ACT 2601

The Rule change proposal is supported by NEMMCO and has also been extensively consulted with generators and transmission network service providers (TNSPs).

***Description of the proposed Rule***

The Rule is to allow the completion of the performance standards for generating units that were deemed under the previous transitional regime for performance standards and to adjust any accepted performance standard that is now considered to be incorrect. It also provides for establishment of performance standards for generating plant that was missed by the previous process. The proposed Rule provides a rigorous process for determining the standards, including reference to an independent expert where the generator and NEMMCO

cannot agree. While a formal process is established, NEMMCO and participants are able to choose a simpler and faster process as long as they agree performance standards by 1 March 2007.

The Rule change requires all performance standards to be resolved by 30 June 2007. The process defines the performance standards to be addressed. If a standard is agreed it is put into the register and removed from the process. Any standard that has not been agreed by 1 March 2007 must be referred for expert determination.

A flow chart of the process is included as Appendix A and suggested wording, agreed between NEMMCO and the NGF, is attached as Appendix B.

While the Rule is being assessed by the AEMC, NEMMCO and generators are broadly following the process in the Rule proposal with a view to ensuring that performance standards are agreed by the end date of 30 June 2007. The Rule proposal therefore contains a clause validating these actions.

The Rule proposal also contains key dates in square brackets. The AEMC will need to adjust any dates that have passed when making the Rule so that they fall after the gazettal date. The dates will be used by NEMMCO, generators and the Australian Energy Regulator to assess progress in establishing the performance standards. It is intended, however, that some of the steps will be complete before the Rule is made and, for these steps, a date shortly after the gazettal date should be substituted for the date in the brackets when the Rule is finally made.

### ***Issues to be addressed by the proposed Rule***

The purpose of performance standards is to allow NEMMCO to be aware of key aspects of the expected performance of generating units during contingency and other events. It also allows generators to be aware of the performance requirements of their plants

At the conclusion of the transitional process that was part of the introduction of performance standards, those standards that were not agreed were deemed using a specified hierarchy. While this process ensured that all generating units had defined performance standards, the deeming process did not provide a clear process to determine or register performance standards and overlooked plant for which a connection agreement was in place but no one was registered with NEMMCO as the generator. The lack of performance standards has also created difficulty in the establishment of appropriate compliance plans by generators.

In addition, during the process to agree the performance standards, some performance standards have been established that NEMMCO or generators now consider to either be too low, potentially leading to reduced asset utilisation or increased ancillary services costs, or be too high and therefore unachievable by the plant in practice.

The Rule change proposed would complete the establishment of performance standards for all significant generation plant connected to the system and ensure that NEMMCO has the necessary generator technical information it requires to optimally manage the power system. In addition, generators would be able to provide assurance that their plant is maintaining those performance standards.

### ***How the Rule change meets the Market Objective***

Currently, NEMMCO does not have a complete register of performance standards for all generation plant in the NEM. This means that some generation plants do not have clear technical performance requirements, which has the potential to increase costs and reduce the reliability and security of the power system. This Rule change proposal will redress this situation.

Completion of the standards will also allow generators to modify their current compliance testing to provide better assurance that the power system will perform as expected during contingency events.

Both of these outcomes are in the long term interests of customers in terms of reliability and security of supply.

### ***Use of the process in section 96 of the National Electricity Law***

NEMMCO and the generators have commenced work under this process, supported by the AER. We believe it is necessary to move as rapidly as possible so that the performance standards can be finalised by 30 June 2006. The proposed Rule has been agreed between the NGF and NEMMCO and consulted with the TNSPs. We therefore consider that the proposal that has resulted will be non-controversial.

The NGF therefore requests that the AEMC treat this Rule request as a Non-controversial and urgent Rule and use the process in section 96 of the National Electricity Law.

### ***Contacts for this Rule change***

The contact within the NGF for this Rule change proposal is Alex Cruickshank, who can be reached on (03) 8633 6026, mobile 0402 060 881 or by email to [acruicks@agl.com.au](mailto:acruicks@agl.com.au).

Yours sincerely

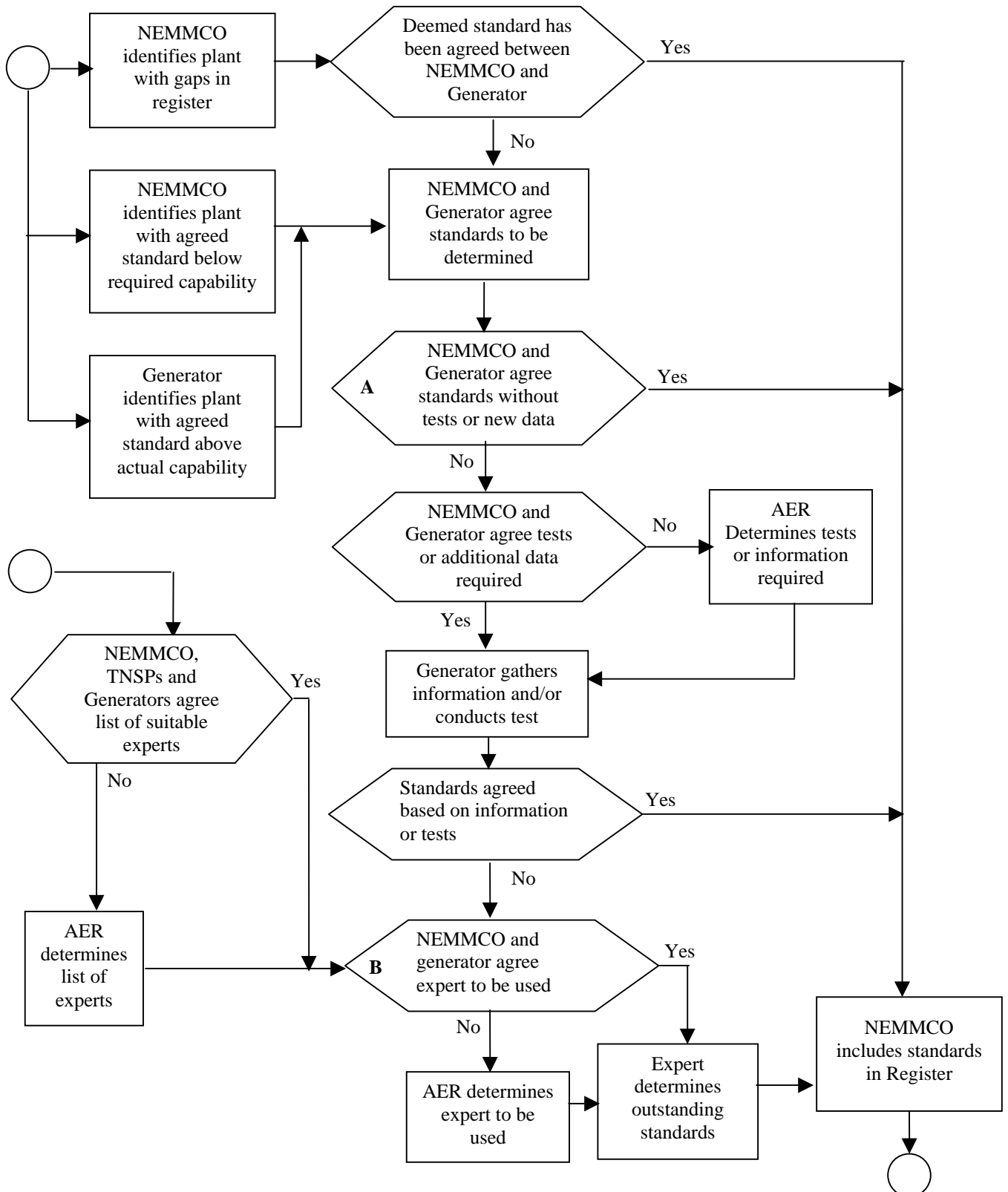
NEMMCO supports this Rule change proposal.

John Boshier  
Executive Director  
NGF

Brian Spalding  
Chief Operating Officer  
NEMMCO

## Flow Chart for Rule change proposed by NEMMCO and the NGF

- to allow completion by 30 June 2007 of the Performance Standards Register for plants planned or in-service at the commencement of the current Performance Standards regime.
- NEMMCO and a generator can agree an alternate process to be used to gain agreement. This will occur at reference point A. If the process fails the parties re-enter the process at B.
- After the initial referral date, any party can immediately refer a matter to an expert commencing at B.
- If a party stops responding to this process, the matter is referred to an expert commencing at B.
- On 1 March 2007, all outstanding standards will drop through to reference point B.



## **4.16 Transitional arrangements for establishment of performance standards**

### **4.16.1 Definitions**

In this clause 4.16 and clause 4.17:

- (a) **"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*;
- (b) **"agreed performance standard"** means a standard of performance that:
  - (1) is established as a result of it being accepted by *NEMMCO* in accordance with:
    - (i) clause 4.14(d)(1); or
    - (ii) clause 4.14(d)(1) of the National Electricity Code; and
  - (2) is in respect of a performance requirement;
- (c) **"deemed performance standard"** means a standard of performance that:
  - (1) is established as a result of it being deemed to apply in accordance with:
    - (i) clause 4.14(h); or
    - (ii) clause 4.14(h) of the National Electricity Code; and
  - (2) is in respect of a performance requirement;
- (d) **"eligible plant"** means a *generating unit* (including a pumping generating unit) and *plant* associated with that *generating unit*.
  - (1) in relation to which a person was registered as a *Generator* as at the *performance standards commencement date*; or
  - (2) to which a *connection agreement* applied as at the *performance standards commencement date*;
- (e) **"final referral date"** means [1 March 2007];
- (f) **"Generator notice"** means a notice given by a *Generator* to *NEMMCO* in accordance with clause 4.16.3(c);
- (g) **"Generator reply notice"** means a notice given by a *Generator* to *NEMMCO* in accordance with clause 4.16.3(h);
- (h) **"initial referral date"** means [15 January 2007];
- (i) **"initiating party"** has the meaning given to it in clause 4.17.2(a);
- (j) **"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*;

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- (k) **"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;
- (l) **"NEMMCO notice"** means a notice given by *NEMMCO* to a *Generator* in accordance with clause 4.16.3(b);
- (m) **"NEMMCO reply notice"** means a notice given by *NEMMCO* to a *Generator* in accordance with clause 4.16.3(f);
- (n) **"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);
- (o) **"performance requirement"** means:
- (1) in the case of 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
  - (2) in the case of 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.
- (p) **"performance standard requirements"** means the requirements set out in clause 4.16.5(c);
- (q) **"performance standards acceptance date"** means [30 November 2006];
- (r) **"performance standards agreement date"** means [30 September 2006];
- (s) **"performance standards determination date"** means [1 June 2007];
- (t) **"performance standards expert"** means a person engaged by *NEMMCO* under clause 4.17.1(h);
- (u) **"performance standards committee"** means the committee established by *NEMMCO* under clause 4.17.1(a);
- (v) **"performance standards notification date"** means [1 August 2006];
- (w) **"performance standards response date"** means [31 August 2006];
- (x) **"performance standards transition commencement date"** means *[insert date of commencement of rule change]*;
- (y) **"proposed performance standards acceptance date"** means [31 October 2006];
- (z) **"pumping generating unit"** means a *generating unit* that can also operate as a hydro-electric pump;
- (aa) **"receiving party"** has the meaning given to it in clause 4.17.2(a);
- (bb) **"register"** means the register of *performance standards* established and maintained by *NEMMCO* under clause 4.14(n);

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- (cc) **"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; and

#### **4.16.2 Exclusions**

For the avoidance of doubt:

- (a) this clause 4.16 and clause 4.17 do 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 clause 4.16 or clause 4.17 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 clause 4.16 or clause 4.17 (as the case may be).

#### **4.16.3 Notification and acceptance of performance standards**

##### **Agreement as to performance standards**

- (a) (1) *NEMMCO* and a person who is registered as a *Generator* in relation to eligible plant may, at any time before the final referral date, agree 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.
- (2) A performance standard that is agreed under this 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.
- (3) If, as at the final referral date:
- (i) *NEMMCO* is not required to include the performance standard in the register under paragraph (2); and
- (ii) *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.

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### **NEMMCO notice**

- (b) As soon as reasonably practicable but by no later than the performance standards notification date, *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 plant 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(g) – 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**

- (c) As soon as reasonably practicable but by no later than the performance standards response date, 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 plant, 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(i) – 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;



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(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 clause 4.16.3(b)(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.

(d) 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(i), 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(g), 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 clause 4.16.3(b)(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:

- (i) the required actual capability of the eligible plant in respect of that performance requirement, as notified to the *Generator* under clause 4.16.3(b)(2), is to be taken as the *performance standard* in respect of that performance requirement for that eligible plant; and
- (ii) *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**

(e) Where:

- (1) (i) *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

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address a *power system security* issue and the *performance standard* in respect of that performance requirement is not determined under clause 4.16.3(d)(2);

- (ii) *NEMMCO* has given the *Generator* a *NEMMCO* notice that specifies a performance requirement under clause 4.16.3(b)(3); or
  - (iii) a *Generator* gives *NEMMCO* a *Generator* notice that specifies a deemed performance standard under clause 4.16.3(c)(1) or a registered performance standard under clause 4.16.3(c)(2); and
- (2) 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:

- (3) include with its *Generator* notice; or
- (4) if it does not give *NEMMCO* a *Generator* notice, provide to *NEMMCO* by no later than the performance standards response date,

a copy of the current *connection agreement* that applies to the eligible plant. This copy of the *connection agreement* may be altered in such a way as to mask any commercial arrangements and is *confidential information*.

#### **NEMMCO reply notice**

- (f) 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 clause 4.16.3(c)(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 clause 4.16.3(c)(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 clause 4.16.3(c)(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

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clause 4.16.3(b)(2), is higher than the *Generator's* assessment of the actual capability referred to in paragraph (i),

whether *NEMMCO* accepts the *Generator's* assessment;

(4) where the *Generator* has given *NEMMCO* a *Generator* notice that specifies a proposed performance standard under clause 4.16.3(c)(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 clause 4.16.3(b)(3) and the *Generator* has either:

(i) not proposed a performance standard under clause 4.16.3(c)(4); or

(ii) not given a *Generator* notice to *NEMMCO*,

the performance standard (if any) that *NEMMCO* proposes for that purpose.

(g) If:

(1) *NEMMCO* states in a *NEMMCO* reply notice that it accepts a standard referred to in clause 4.16.3(f)(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) (i) *NEMMCO* states in a *NEMMCO* reply notice that 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 clause 4.16.3(c)(3); and

(ii) 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 clause 4.16.3(b)(2),

then:

(iii) 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

(iv) *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**

(h) Where *NEMMCO* has given a *Generator* a *NEMMCO* reply notice that specifies a proposed performance standard under clause 4.16.3(f)(5), that *Generator* must, as soon as reasonably practicable but by no later than the proposed performance

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standards acceptance date, give written notice to *NEMMCO* which states whether it accepts that performance standard.

- (i) If the *Generator* states in a *Generator* reply notice that it accepts a standard referred to in clause 4.16.3(h), 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 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 the tests or engineering assessments that are to be undertaken, or the time by which they are to be undertaken, as referred to in paragraph (i), 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 clause 4.16.4(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 clause 4.16.4(b) must be borne by the *Generator*.

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- (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(f)(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(f)(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
  - (3) may only agree to a performance standard under clause 4.16.3(a) or as described in clause 4.17.3(d) 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(f)(3), and the *Generator* is required to renegotiate the relevant registered performance standard pursuant to clause 4.16.5(g);
  - (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(f)(2), and *NEMMCO* is required to renegotiate the relevant registered performance standard pursuant to clause 4.16.5(i);
  - (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(f)(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(h),  
  
*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 clauses 4.16.5(d) and (e), a performance standard referred to in clause 4.16.5(a) or negotiated in accordance with clause 4.16.5(b) must be the least onerous of:

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- (1) in the case of a performance standard other than a performance standard referred to in clause 4.16.5(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.

As a result of the application of this clause 4.16.5(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.

- (d) 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 clause 4.16.5(c).
- (e) *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**

- (f) For the purpose of facilitating the negotiations referred to in clause 4.16.5(b), the *Generator* must provide to *NEMMCO* as soon as reasonably practicable but by no later than the performance standards acceptance date:
  - (1) a copy of the current *connection agreement* that applies to the relevant eligible plant; and
  - (2) details of the design performance of the eligible plant.

This obligation does not apply to the extent the *Generator* has already provided such documents and information to *NEMMCO*. The copy of the *connection agreement* referred to in paragraph (1) 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**

- (g) *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

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- (2) *NEMMCO* is satisfied that a higher performance standard in respect of that performance requirement is required to address a *power system security* issue.
- (h) Notwithstanding clause 4.16.5(g), 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**

- (i) 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.
- (j) Notwithstanding clause 4.16.5(i), *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**

- (k) 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 clause 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(e),

*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 clause 4.16 or clause 4.17, *NEMMCO* must

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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 clause 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(e) that such a performance requirement is not applicable to that eligible plant; and
  - (3) as at the initial referral date, *NEMMCO* is not required under clause 4.16.5(k) to include in the register a performance standard for that eligible plant that is in respect of that performance requirement,

the *Generator* or *NEMMCO* may give a written notice to the other 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(e) that such a performance requirement is not applicable to that eligible plant;
  - (3) as at the final referral date, *NEMMCO* is not required under clause 4.16.5(k) 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 clause 4.16 or clause 4.17 before the performance standards transition commencement date 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



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that provision with effect on and from the performance standards transition commencement date.

#### **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 clause 4.16.10(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 clause 4.16 or clause 4.17; and
  - (2) except to the extent they have been superseded by a *performance standard* referred to in paragraph (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 the performance standards agreement date, *NEMMCO* must establish a committee comprising six members (the "performance standards committee"). 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*.
- (b) A decision of the performance standards committee to nominate a person as a performance standards expert must be made:

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- (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.
- A quorum for a meeting of the performance standards committee consists of one member from each of the categories referred to in clause 4.17.1(a)(1) to (3).
- (c) The chairperson of the performance standards committee:
    - (1) is responsible for all procedural matters; and
    - (2) without limiting paragraph (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.
  - (d) 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.
  - (e) As soon as reasonably practicable after it is established, the performance standards committee must nominate at least two persons as performance standards experts.
  - (f) 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.
  - (g) 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.
  - (h) *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 clause 4.17.
  - (i) *NEMMCO* must notify the *AER* in writing of each performance standards expert that it engages under clause 4.17.1(h).
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- (j) The performance standards committee will cease to exist one month after the performance standards determination date.

#### **4.17.2 Referral to performance standards expert**

- (a) Where *NEMMCO* or a *Generator* gives a notice under clause 4.16.3(a)(3) 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(a)(3) 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

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- (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 the performance standards determination date, 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 the relevant performance standard.
  - (e) A performance standard in respect of a particular performance requirement that is:
    - (1) agreed as described in clause 4.17.3(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 one month after the performance standards determination date, a performance standards expert must provide a summary of each determination it makes under this clause 4.17 to *NEMMCO* and *NEMMCO* must *publish* that summary as soon as is reasonably practicable.
  - (g) A summary under clause 4.17.3(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

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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).

## **Consequential Amendments**

### **Clause 4.15(b)**

Clause 4.15(b) is amended by inserting the words ", the registration of the *performance standard* under clause 4.16 or 4.17" after the words "(as the case may be)".

### **Clause 5.2.5(a)**

Clause 5.2.5(a) is amended by deleting it and inserting the following clause in its place:

- "(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 clause 5.2.5(a)(1), the connection agreement that applies to those facilities; and
  - (3) subject to clause 5.2.5(a)(2), the system standards."

### **Definition of performance standard**

The definition of "performance standard" in Chapter 10 is amended by deleting it and inserting the following definition in its place:

#### **"performance standard**

A standard of performance that:

- (a) is established as a result of it being:
  - (1) accepted by *NEMMCO* in accordance with clause 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 clause 4.14(h); or
  - (4) determined pursuant to clause 4.14(m); or
- (b) is included in the register of *performance standards* established and maintained by *NEMMCO* under clause 4.14(n),

as the case may be."