



10 February 2016

Mr John Pearce
Chairman
Australian Energy Markets Commission
PO Box A2449
Sydney South NSW 1235

Dear Mr Pearce

RE: Compliance with Dispatch Instructions (Reference: ERC0187)

ERM Power Limited (ERM Power) welcomes the opportunity to respond to the Australian Energy Market Commission's (the Commission) Draft Determination on the Compliance with Dispatch Instructions rule change request proposed by Snowy Hydro (the Proponent).

About ERM Power Limited

ERM Power is an Australian energy company that operates electricity generation and electricity sales businesses. Trading as ERM Business Energy and founded in 1980, we have grown to become the fourth largest electricity retailer in Australia, with operations in every state and the Australian Capital Territory. We are also licensed to sell electricity in several markets in the United States. We have equity interests in 497 megawatts of low emission, gas-fired peaking power stations in Western Australia and Queensland, both of which we operate.

General comments

ERM Power supports the Commission's statement in the Draft Determination:

The Commission acknowledges that exact compliance with dispatch instructions may not always be possible due to the physical realities of operating generators.¹

ERM Power is therefore disappointed that the Commission has determined to leave the requirement for strict compliance with dispatch instructions as per the current rule. Good regulatory practice requires rules that can be clearly interpreted and practically complied with by participants, indicating a clear basis for compliance monitoring and enforcement by regulators. Instead, the existing Clause 4.9.8 of the National Electricity Rules (NER) establishes a rule which cannot be technically complied with under all situations, as acknowledged by the Commission above. ERM Power urges the Commission to reconsider this determination.

While the Commission considers that adjusting the standard to require *reasonable endeavours* may lead to compromised dispatch outcomes from a system security perspective, ERM Power suggests that a

¹ AEMC, *Compliance with Dispatch Instructions - Draft Determination*, December 2015, p. 17

requirement for generators to use *best endeavours* to comply with dispatch instructions may be a suitable alternative.

AEMO dispatch compliance monitoring

The Commission's Draft Determination proposes that the purpose of Australian Energy Market Operator's (AEMO) dispatch compliance monitoring system is solely related to procedures for setting Regional Reference Prices and is directed to a purpose other than compliance with the NER. ERM Power strongly disagrees with the Commission's interpretation of Clause 3.8.23 of the NER.

Clause 3.8.23 of the NER requires that AEMO maintain a system for the monitoring of generator compliance with dispatch instructions and that this monitoring system sets out a procedure for failure to respond to a dispatch instruction within a tolerable time and accuracy, as determined in AEMO's reasonable opinion. This clause also requires that any generator which has been declared non-conforming must follow a specific output profile, as determined by AEMO, to return to dispatch compliance.

This determination regarding tolerable time, accuracy and specific output profile resides solely at AEMO's discretion and ERM Power believes it is inconceivable that an experienced system operator such as AEMO would allow these settings to compromise system security.

AEMO's own system operating procedures indicate:

*Compliance Monitoring is a process that AEMO applies to scheduled generating units, semi-scheduled generating units, scheduled loads and scheduled network services. The aim of the process is to identify **and implement corrective measures** if a Market Participant fails to follow a dispatch instruction.² [ERM Power's emphasis]*

ERM Power contends that the primary purpose of Clause 3.8.23 of the NER in fact requires AEMO to develop and maintain a procedure to determine technical compliance with dispatch instructions, within a tolerance level which is satisfactory from a system security perspective and to identify (and where applicable, declare) non-conforming generators who have clearly failed to comply with dispatch instructions and therefore may be compromising system security. Clause 3.8.23 also sets out procedures to be followed by AEMO and the responsible participant to return a generator to compliance with dispatch instructions. This is very different to the interpretation that the Commission applies to Clause 3.8.23.

The provision for removing a generator which has been declared non-conforming from the price setting process is merely a secondary consideration to ensure a reasonable level of pricing accuracy in the market process.

On a practical note, ERM Power observes that the current AEMO process (whereby in the first instance AEMO flags a unit as off target) is highly efficient in focussing a participant's attention on compliance with dispatch instructions, and ERM Power commends AEMO for the design and information provisions of their dispatch compliance monitoring process.

ERM Power requests that the Commission give further consideration to the provisions of Clause 3.8.23 and the purpose of AEMO's compliance with dispatch instructions monitoring process.

² AEMO, *Systems Operating Procedure*, May 2014, p. 9

Regulatory uncertainty of the current NER

The Commission in the Draft Determination argues that there is no uncertainty with regulatory enforcement with regard to Clause 4.9.8 of the NER, because although the wording of the rule requires strict compliance with dispatch instructions, the Australian Energy Regulator (AER) has total discretion with regard to how this rule will be enforced.

The Commission also points to the AER's Compliance and Enforcement Statement of Approach and Compliance Bulletins and suggests these, in some way, provide a level of certainty to market participants.

As stated previously, the Commission acknowledges that exact compliance with dispatch instructions may not always be possible. Yet, the Commission has determined that the current wording of the rule is suitable based on a view that the AER will act with a level of discretion in how the provisions of this rule is enforced. ERM Power contends that an ambiguous level of discretion by a Regulator in its enforcement approach is a poor substitute for clear and distinct meaning in the NER, inconsistent with good regulatory practice.

In addition, the AER's Compliance and Enforcement Statement of Approach and Compliance Bulletins are subject to review and possibly significant change at the AER's sole discretion. The Commission should be mindful of this fact, and consider the level of uncertainty this possible unilateral change regime may present to participants.

Currently ERM Power observes a significant number of instances where generators in the NEM are declared non-conforming with dispatch instructions by AEMO. The level of discrepancy of actual output to dispatch targets as advised in Market Notices issued by AEMO may at times be significant. In the majority of these instances no regulatory action is observed. On the other hand, the AER has requested participants to provide details regarding relatively small volumetric discrepancies to dispatch targets for periods as brief as one or two dispatch intervals. In these instances, the offending generator may not have been identified through AEMO's dispatch instruction compliance process.

The current regulatory situation creates uncertainty and confusion for participants. Generators declared non-conforming by AEMO will most likely be in breach of Clause 4.8.9, yet the super majority of these non-conformances attract no regulatory response. On the other hand, generators who have not been declared non-conforming by AEMO may be found to have breached Clause 4.8.9.

In conclusion, the Commission acknowledges that strict compliance with dispatch instructions may be technically unachievable in some situations. This technical distinction should be recognised within the NER.

AEMO's dispatch compliance monitoring process developed in accordance with Clause 3.8.23 of the NER has the primary purpose of monitoring participants' compliance with dispatch instructions and implementing corrective measures as and when required. This process leads to pragmatic outcomes that do not result in system security breaches (if they did AEMO would almost certainly modify them to prevent this).

Uncertainty and confusion exists with the current AER dispatch compliance process. The AER's approach to monitoring and enforcing compliance is subject to unilateral change at any time and reliance on this in place of providing adequate clarity in the NER is inconsistent with good regulatory practice.

ERM Power encourages the Commission to the matters raised in this submission into consideration for either an additional Draft Determination or the Final Determination.

Please contact me if you would like to discuss this submission further.



Yours sincerely,

[signed]

David Guiver
Executive General Manager - Trading

07 3020 5137 – dguiver@ermpower.com.au