

15 July 2006

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

Dear Dr Tamblyn

Submission on review of enforcement and compliance with technical standards draft report

Thankyou for the opportunity to make this submission on the Commission's draft report reviewing the enforcement and compliance with technical standards.

Based on NEMMCO's operational experience with the existing framework, we support the general thrust of the recommendations in the report.

A number of alterations to the recommendations could be introduced to improve the operation of the technical standards. This submission focuses on these operational improvements. In summary:

- **Existing Plant:** The Rules should be changed to support NEMMCO and the generators to document actual rather than deemed performance standards of existing generators. Dispute resolution should be managed using an expert binding determination rather than arbitration.
- **Network Service Providers:** NEMMCO has no powers under the NEL to oversee performance standards relating to quality of electricity supply. Consequently, DNSPs should not be required to submit performance standards to NEMMCO. Rule changes should not be progressed with the MCE until the proposed AEMC review is complete.
- **Rejection of Compliance Programs:** The AER and NEMMCO should both be able to reject incomplete compliance programs provided there is no potential for overlap or gap in the responsibilities of the two bodies.
- **Timeframe for Rectification of Non-Compliance:** NEMMCO should not be required to consider the "cost to the market" when specifying a rectification timeframe. The information, expertise and time required to perform a rigorous analysis of market cost makes it impractical. An abbreviated process using incomplete information or a less robust analysis could be misleading or incorrect.
- **Enforcement and Penalties Regime:** If a fault based liability regime is to be adopted, it is important that the regime be designed so as not to have unintended consequences that may ultimately affect NEMMCO's ability to effectively manage the power system.

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Further details regarding the above are in the attached submission.

NEMMCO would be pleased if you could have these matters considered by the AEMC. For further details, please do not hesitate to contact Mark Miller on (02) 8838 5620.

Yours sincerely,



Dr Charlie Macaulay
General Manager Operations and Planning

Attachment

SUBMISSION

1. Performance standards for existing plant

NEMMCO has commenced working with generators to develop a Rule change that will enable parties to agree upon or otherwise have determined performance standards for each of the existing generators based on their actual capability. The Rule change under development does not attempt to settle the existing deemed standards as this mechanism has already failed.

The dispute resolution process should use a binding expert determination rather than formal arbitration. Arbitration is governed by the Commercial Arbitration Act which places formal obligations on the arbitrator and the two parties to the dispute. Binding expert determination is a flexible dispute resolution process based on the decision of an independent expert. The advantages of a binding expert determination over arbitration are:

- less legal costs on the involved parties;
- less complexity in the process;
- more expeditious resolution of the performance standards;
- greater expertise through having a power systems expert assessing the issues rather than an Arbitrator who are usually experts in the construction industry; and
- it is already used with success in other parts of the Rules.

2. Performance standards and compliance programs for NSPs

The National Electricity Law (NEL) does not provide NEMMCO with oversight of quality of supply issues needed to implement NSP (particularly DNSP) performance standards and compliance programs.

NEMMCO's role, under s49 (e) of the NEL, is to maintain and improve power system security in respect of the NEM. Technical oversight of all parts of NSP performance standards (both transmission and distribution) would require both power system security and quality of electricity supply functions.

Transmission network performance has a greater impact on power system security, while distribution network performance has a greater impact on quality of electricity supply. Given that the Commission's review is concerned with ensuring power system security in the NEM, DNSPs should not be required to submit performance standards to NEMMCO.

Also the MCE should not be asked to initiate Rule changes for NSP compliance programs at this stage as this pre-empts the outcomes of the AEMC review under recommendation 2.

3. Powers to reject compliance programs

The Commission considers both NEMMCO, being responsible for system security, and the AER, being responsible for enforcement and compliance, should have a right of veto of proposed compliance programs. Provided the Rule clearly establishes, and overcomes the potential for overlap or gaps in, the responsibilities of the two bodies, NEMMCO supports this aspect of recommendation 5.

4. Determining a timeframe for rectification

NEMMCO should not incorporate a “cost to the market” component in a determination of a timeframe for rectifying a breach under clause 4.15(j) of the Rules (recommendation 7).

This requires “cost” to be more closely defined. To be rigorous, NEMMCO would need to include those costs:

- associated with greater risks to power system security from a continued breach;
- associated with the reliability of the power system; and
- to generators of:
 - sourcing additional plant and equipment to rectify a breach;
 - taking a plant off line outside the maintenance cycle; and
 - their financial contracts.

NEMMCO does not have access to sufficient information on the financial electricity market or the costs of labour and equipment borne by a generator in rectifying a breach.

Unless the assessment of costs is consistent with the NEM objective, an incomplete or superficial assessment of the costs could be misleading or incorrect. A rigorous analysis would impose additional time and costs, which may be substantial, in deciding on a rectification period.

5. Enforcement and penalties

The liability regime to be applied is clearly a policy issue.

If a fault based liability regime is to be adopted, it is important that the regime be designed so as not to have unintended consequences that may ultimately affect NEMMCO’s ability to effectively manage the power system.

For instance under a fault based regime, NEMMCO would be concerned if a participant was to:

- Withhold information from NEMMCO requested as part of its preparation of a Market or System Incident Report (eg on the basis that the information is subject to privilege). This may occur if the participant is concerned about its potential liability and does not wish to disclose information that could ultimately be used in a compliance action against it; and
- Delay works to its plant to address a potential deficiency due to concerns that such an action may be construed as an admission of liability. In these circumstances, NEMMCO may be required to operate the system in a more conservative manner until the situation is remedied.

Issues such as the above could also be exacerbated by the longer timeframes usually associated with matters being determined under a fault based regime, assuming that the participant is asserting that it is not at fault.