

Our Ref: 11813716
Your Ref: ERC0305
Contact Officer: Chris Ridings
Contact Phone: 08 8213 3487
Date: 3 February 2021

Ms Anna Collyer
Chair - Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

Dear Ms Collyer,

Prioritising arrangements for system security during market suspension

The Australian Energy Regulator (**AER**) welcomes the opportunity to comment on the Australian Energy Market Commission's (**AEMC**) *Prioritising arrangements for system security during market suspension* consultation paper. This rule change proposal aims to address issues identified during the period of market suspension that followed the September 2016 black system event in South Australia.

As highlighted in our Black system event compliance report¹, we identified issues regarding clarity of communications and transparency on the part of the Australian Energy Market Operator (**AEMO**) during market suspension. We consider that these issues manifested as a breach of National Electricity Rules (**NER**) obligations (relating to the issuing of market notices as part of considering clause 4.8.9 directions).

However, AEMO considered that the NER is only specific about pricing during market suspension (clause 3.1.14), pointing to clause 3.14.4(e)(1) which states if AEMO has declared that the spot market is suspended, it may issue directions to participants in accordance with clause 4.8.9, and, to the extent possible, rules 3.8 and 3.9. Beyond this, AEMO considered that market suspension provisions did not specifically mandate compliance with any other provisions in the NER. However, the AER considered that other obligations under the NER remained in effect in the absence of an explicit provision to the contrary. This highlights a key area of divergence between the AER and AEMO in respect of the interaction and applicability of the market operation and system security rules during a period of market suspension. As such, we consider that it is important to clarify this issue in order to provide certainty to market participants.

We accept that operating the power system during a period of market suspension is likely to be more challenging. However, our view is that providing AEMO with flexibility as to which NER provisions it does not need to comply with will not lead to a more optimal outcome during market suspension. While AEMO may consider certain obligations to be more administrative in nature, such as the issuing of market notices prior to intervening, we consider these critical to providing transparency to all participants. If AEMO is not providing timely and sufficient notice of a possible intervention, it does not allow market participants the opportunity to address AEMO's concerns with a market-based solution.

¹ <https://www.aer.gov.au/wholesale-markets/compliance-reporting/investigation-report-into-south-australias-2016-state-wide-blackout>

We recognise that this rule change seeks to allow AEMO to prioritise what it considers to be its more critical obligations with regard to power system security during periods of market suspension. However, we consider it would be more optimal to determine, and explicitly state, which obligations AEMO does not need to comply with during a period of market suspension. This approach provides clarity and transparency to AEMO and market participants, as well as minimising regulatory burden on any review of the actions of participants during the market suspension period.

By contrast we consider that building 'compliance flexibility' into the NER is likely to be more burdensome in practice as AEMO would need to make individual assessments on a continuing basis as to which obligations not to comply with in any particular scenario and communicate this to the market in a transparent manner.

Importantly, in any compliance review the AER takes into account all relevant facts and circumstances when assessing the compliance of a participant against their obligations in the NER in accordance with our Statement of Approach². In our Black system event compliance report, we took into consideration the unique and unprecedented circumstances of the South Australian black system event, including AEMO's view as to what its obligations were during that period. We consider that it is through this lens that AEMO is afforded the discretion to prioritise obligations in the rare circumstances where it is not able to simultaneously meet competing obligations.

Therefore, while we recognise that there are times when AEMO may be forced to prioritise certain obligations to maintain power system security, it is also important that a degree of clarity and certainty is provided to market participants over which NER obligations do not apply. On the rare occasions where AEMO finds it must prioritise obligations, these will be considered alongside all relevant factors when assessing compliance.

We thank the AEMC for the opportunity to submit on this process. If you have any questions about our submission, please contact Chris Ridings on 08 8213 3487.

Yours sincerely,

A handwritten signature in blue ink that reads "Jim Cox". The signature is written in a cursive style with a large initial 'J'.

Jim Cox
Deputy Chair
Australian Energy Regulator

² <https://www.aer.gov.au/publications/corporate-documents/aer-compliance-enforcement-policy>