



Australian Energy Market Commission

Final Rule Determination

Rule Proposal: *Timely information to NEMMCO after operating incidents*

Proponent: *NEMMCO*

Date: *January 2006*

Commissioners:
Tamblyn
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Summary

NEMMCO has proposed that a change be made to the National Electricity Rules, to require participants to respond within a limited timeframe when asked to provide information to NEMMCO for the purposes of a NEMMCO conducted review of an operating incident.

While the National Electricity Rules currently require participants to provide information to NEMMCO relating to the performance of their equipment following power system incidents, the Rules make no provision as to the time period in which the participant is required to provide that information to NEMMCO.

The proposal seeks to balance the benefits, in terms of power system security, of rapid and efficient investigations into power system incidents, with the difficulty that market participants may face in providing particular information to NEMMCO within a short period of time.

NEMMCO's proposal was originally lodged with the National Electricity Code Administrator (NECA. The Australian Energy Market Commission (Commission) became responsible on 1 July 2005 to take the proposal forward. This final Rule determination contains the Commission's assessment of the proposal, carried out in accordance with the requirements of the National Electricity Law.

Three submissions were received at the initial consultation (s.95) stage. In addressing the submissions and issues identified by the Commission, the Commission made a number of changes to the proposed Rule, which were then the subject of a draft Determination and released for comment.

The Commission received a submission in response to the draft determination, proposing that the Rules should specify a time limit for NEMMCO to complete reports into operating incidents. The Commission has determined to make no additional changes to the draft Rule, on the basis that NEMMCO has completed these reports in a timely manner in the past. Should this not continue to be the case, the Commission would give positive consideration to a Rule proposal addressing this issue.

The Commission is satisfied that the Rule is likely to contribute to the National Electricity Market (NEM) objective, and that it therefore satisfies the Rule Making Test, by contributing to a more rapid completion of reports into operating incidents, and therefore to address issues affecting the security and reliability of the electricity system.

Accordingly, the Commission has determined to make a Rule to address the issue raised in the proposal. This Final Rule Determination sets out the reasons of the Commission in accordance with the requirements of the National Electricity Law.

1. The proponent's Rule proposal

NEMMCO lodged a proposal with NECA in April 2005, to change the (then) National Electricity Code in relation to investigations of operating incidents.

Under the Code (and now Rules) while participants are required to provide information to NEMMCO for the purposes of an investigation into the incident, no time obligation is placed on participants to provide the required information to NEMMCO.

NEMMCO has proposed to introduce a 20 business day requirement for responses to requests for information from NEMMCO, or within a timeframe agreed between NEMMCO and the participant, following a power system incident. The agreed timeframe would take into account the circumstances of the particular power system incident, the nature of the information requested or operating condition deviations.

The proponent noted that the proposal was lodged after its review of a power system incident on 13 August 2004. In their report, NEMMCO stated the key issue that this Rule proposal is designed to address:

Following the occurrence of significant power system events it is critical that shortly following the event, NEMMCO is able to quickly and effectively obtain information from the relevant parties to assess the risks to overall power system security and for rapid follow-up. The Code currently provides for this information to be provided to NEMMCO but there are no time limits specified for the provision of this information.¹

NEMMCO's report also identified other areas of concern with the Code (now Rules) in regard to responses to operating incidents.² Central to NEMMCO's concern in the report was ensuring power system security:

It is fundamental from a power system security perspective that NEMMCO be in a position to determine that the system is capable of withstanding credible contingency events and, if it is not, that action can be taken to rectify the matter.

This Rule proposal seeks to ensure that matters that can affect power system security can be investigated and resolved in a timely manner.

1 NEMMCO, Power system incident report – Friday 13 August 2004, p16.

2 NEMMCO also stated that it does not have any basis under the Code for:

- (a) Requiring Generators to commence such an investigation process or,
- (b) Requiring Generators to provide NEMMCO with an assurance that their generating unit can withstand a credible contingency event.

2. The final Rule determination

The Commission has determined, in accordance with section 102 of the National Electricity Law (NEL), to make the Rule set out at Attachment 1 of this final Rule determination. The wording of the final Rule amends aspects of the proposed Rule as put forward by NEMMCO, for the reasons set out at section 5 of this determination.

In coming to its decision, the Commission has considered:

- The Rule proposal and the proposed Rule put forward by NEMMCO (see section 1 of this determination);
- submissions received (see section 5 of this determination);
- the requirements under the NEL (see section 3 of this determination)

The Commission has applied the statutory Rule making test and for the reasons set out in section 6 of this final Rule determination, is satisfied that the final Rule is likely to contribute to the achievement of the NEM objective.

3. Requirements under the NEL

3.1 *The head of power for the Rule*

The Commission is satisfied that the Rule falls within the subject matters for which the Commission may make Rules as set out in s.34 of the NEL and in Schedule 1 to the NEL. The Rule relates to the operation of the national electricity system for the purposes of the safety, security and reliability of that system, and s.34 (3) enables the Commission to make Rules imposing obligations on market participants.

The Rule also relates specifically to item 33 of Schedule 1 to the NEL, which state that the subject matter for the Rules may include:

- 33. Reviews by or on behalf of—*
(a) the AER, the AEMC or NEMMCO;

3.2 *Other relevant statutory matters*

The NEL also requires the Commission to have regard to any MCE statements of policy principle in applying the Rule making test. The Commission notes that currently, there are no relevant MCE statements of policy principle.

The Commission also notes that there are currently no prescribed requirements in the NEL Regulations as to the content of a final Rule determination as referred to in s.99(2)(c).

4. Consultation Process

This proposal was submitted by NEMMCO to NECA on 19 April, 2005. NECA did not conduct any consultation on the proposal before the Code (now Rule) changes became the responsibility of the Commission.

Under the National Electricity Law transitional provisions, consideration of this Rule proposal became the Commission's responsibility on 1 July 2005.

On 23 August 2005, under s.94 of the NEL, the Commission determined to commence initial consultation by publishing a notice under s.95 of the NEL.

The Commission received three submissions on the initial consultation, from:

- The National Generators Forum (NGF);
- Macquarie Generation; and
- AGL

On 17 November, the Commission released its draft Rule determination, under s.99 of the NEL, and commenced consultation on the draft determination. The Commission received one submission, from Transend.

The issues raised by these submissions will be discussed in the following chapter.

5. Matters arising from consultation and the Commission's analysis

In this section, the Commission addresses a number of issues that have been raised in submissions or that have emerged during the Commission's analysis.

5.1 Timeframe

What the proponent said

NEMMCO has proposed effectively a two stage process with participants required to respond to a request for information within 20 business days *or* within such time as agreed with NEMMCO, taking into account the circumstances of the particular power system incident or operating condition deviations.

This section will consider whether the 'default' 20 business day timeframe is acceptable. The proponent stated that it considered that a 20 business day time frame was a "reasonable time" for participants to provide information to NEMMCO.

What the submissions said

AGL stated:

It is important to the operation of the National Electricity Market that incidents are investigated as fast as reasonably possible. AGL considers that the proposed 20 business day default with extensions of time as agreed by NEMMCO and the relevant participant are appropriate.

The NGF stated:

The NGF agrees with the proposed 20 business day timeframe for the submission of information relating to the performance of equipment during and after an incident, as drafted in clause 4.8.15(d1).

Macquarie Generation stated:

Macquarie Generation agrees that all available and relevant information regarding a system incident should be submitted to NEMMCO within 20 business days

The Commission's consideration and reasoning

Any time frame determined by the Commission for responses on information requests from NEMMCO will to some extent be arbitrary. However, the Commission does note that all the submissions supported the 20 business day proposal as a reasonable 'default' time frame, in the sense that it will operate in the absence of any extension of time.

Other clauses in the Rules already contain a number of time frames for response from participants where they are required to provide information. There is little consistency in the Rules between individual requirements for responses from participants.

For example, clause 2.9.1 specifies a 15 business day time frame for responses from participants to a request from NEMMCO for more information regarding an application to be registered as a Registered Participant.

Similarly, clause 2.2.6 (d) specifies a 15 business day time frame for responses from participants to a request from NEMMCO for more information regarding an application for a generating unit to be used to provide market ancillary services.

Under clause 3.11.7(c), if requested, a market participant with an ancillary service generating unit or an ancillary service load is required to provide a report to NEMMCO on how the facility responded to a change in frequency “promptly but, in any event, in no more than 20 business days after notice to do so.”

Under clause 3.12A.7, market customers must respond to a request from the independent expert within 10 business days of a request for information.

The Commission’s finding in relation to this issue

Given the support from submissions, and the fact that the proposed default time frame is within the range of timeframes already specified in the Rules, the Commission considers that the 20 day time frame is reasonable as a ‘default’.

5.2 Extensions of time

What the proponent said

NEMMCO’s proposed Rule states:

A Registered Participant must respond to a request by NEMMCO for information under clause 4.8.15(d) within 20 business days, or within such time as agreed with NEMMCO, taking into account the circumstances of the particular power system incident or operating condition deviations.

What the submissions said

The NGF stated:

In some circumstances, it may not be possible for the Registered Participant to furnish detailed analysis or findings regarding the cause of a plant failure or performance deviation within 20 business days. In these cases, the NGF believes that it would be necessary for NEMMCO and the Registered Participant to agree to a timetable for furnishing the additional information required by NEMMCO.

Therefore the NGF proposes the following process for dealing with NEMMCO's information requirements under clause 4.8.15:

- *All available information required by NEMMCO under clause 4.8.15(d) would be provided to NEMMCO within 20 business days to enable NEMMCO to produce its preliminary and/or final report;*
- *Where there are uncertainties, inconsistencies or a lack of complete information, then NEMMCO would be advised of the information gaps, the proposed means to obtain the required information (e.g. plant testing, analysis, expert review) and the timeframe in which the information would be furnished to NEMMCO.*

The Commission's consideration and reasoning

Not all information that NEMMCO may require as part of its investigation into an incident may be available within the 20 business day timeframe that NEMMCO have suggested in the proposal.

One issue raised by the submissions is how to deal with information that is not available within that timeframe. NEMMCO have proposed a simple extension process where NEMMCO had the power to grant an extension “*taking into account the circumstances of the particular power system incident or operating condition deviations.*”

The proposal from the NGF, which was supported by Macquarie Generation, seeks to differentiate between information that may be able to be provided in the short term and information that may require a longer amount of time to be produced.

Additionally, under the NGF proposal an extension would be granted simply on the basis of the market participant advising NEMMCO of information gaps and a timeframe in which the information would be furnished to NEMMCO.

In the view of the Commission, if the extension provision only required a participant to advise NEMMCO of the requirement for more time, the 20 business day default timeframe would have no effect, as a participant could extend the timeframe at will.

Where a participant considers that an extension is necessary to provide the information, the process for granting and determining the time for an extension should be an agreement between NEMMCO and the participant. A process of agreement will ensure that the reasonableness of any request for extension is tested, and should encourage participants to provide information to NEMMCO within the default timeframe where possible.

To guide NEMMCO's discretion in agreeing to an extension, the Commission considers that it is appropriate, as proposed by NEMMCO, for the Rules to specify that the decision to grant an extension should take into account the circumstances of the particular incident.

If the parties cannot agree on whether an extension is necessary, the extension clause would not apply and the default 20 business day timeframe would continue to apply.

The Commission's finding in relation to this issue

The Commission has determined that the Rules should include an extension clause under which:

- A Registered Participant must provide all requested information to NEMMCO within 20 business days.
- NEMMCO may extend the time limit on agreement with the *Registered Participant*, taking into account the circumstances of the particular power system incident or operating condition deviation.

5.3 Extensions of time due to responses from NEMMCO and time limits on NEMMCO

What the proponent said

The proponent did not raise this issue.

What the submissions said

AGL stated:

AGL notes that NEMMCO is not similarly limited in Rule 4.8.15(e) and considers that it may be more appropriate to insert NEMMCO's proposed change as clause (f) rather than (d1) and add a automatic extension of time where a participant is waiting for a relevant response from NEMMCO to allow it to provide the information under 4.8.15(d)

The Commission's considerations

Clause 4.8.15(e) states:

NEMMCO must provide to a Registered Participant such information or reports relating to the performance of that Registered Participant's equipment during power system incidents or operating condition deviations as that Registered Participant reasonably requests and in relation to which NEMMCO is required to conduct a review under this clause 4.8.15.

The Commission notes that this information could come from NEMMCO's own systems, or could come as a result of NEMMCO requesting information from other participants. Such information may be critical in analysing the performance of a Registered Participant's equipment during a system incident.

As AGL noted, there is not requirement on NEMMCO to provide information to a participant within a time limit. While it may not be practical for the Rules to require a set time limit for NEMMCO, the Commission considers that it is appropriate for the Rules to require NEMMCO to provide requested information to participants on an "as soon as practicable" basis.

The provision of information from NEMMCO to a participant could have an effect on the appropriateness of the 20 business day default time frame. Where a participant is waiting for information from NEMMCO, the amount of time available to the participant to produce the required information is reduced by the amount of time it is waiting for information from NEMMCO. If that is the case, the reasonableness of the timeframe comes into question, as the time available to the participant would be reduced to less than 20 business days.

The imposition of a time obligation on a Registered Participant is intended to ensure that the participant provides information to NEMMCO within a reasonable time. The reasonableness of the timeframe is, in part, based on an assumption that the participant has the ability to collect the information from sources within the participant's organisation.

Therefore, the Commission has concluded that it is reasonable to allow a "stop the clock" provision to allow automatic extension of the 20 business day timeframe in circumstances where a participant is waiting for information from NEMMCO, but only where the

participant can demonstrate that satisfaction of NEMMCO's request is dependent on that information.

The Commission's finding in relation to this issue

The Commission has determined that the Rule shall include a 'stop the clock' provision, to the effect that the amount of time that the participant is waiting for information from NEMMCO will be a basis for extension of the default 20 business day time frame.

5.4 What is defined as an operating incident?

What the proponent said

The proponent did not raise this issue.

What the submissions said

Submissions did not raise this issue.

The Commission's considerations

NEMMCO's proposed Rule change has led the Commission to consider how the Rules currently define an operating incident, for the purposes of conducting a review under clause 4.8.15. The clause currently states:

Except where NEMMCO is required to carry out a review under clause 3.14.3(c) in respect of an event or circumstance, NEMMCO must conduct reviews of significant operating incidents or deviations from normal operating conditions in order to assess the adequacy of the provision and response of facilities or services, and the appropriateness of actions taken to restore or maintain power system security.

The Commission considers that the current definition is vague, and provides little guidance on what types of incidents should be investigated and which should not. Accordingly, NEMMCO is placed in a difficult position in being required to determine which incidents should be considered significant without any guidance from the Rules.

The Commission recognises that there are benefits in having operating incidents reviewed, particularly for the reliability and security of the power system. Equally, however, reviews also impose costs on market participants, both through requirements for participants to take part in reviews, and through costs to NEMMCO to conduct reviews which are eventually passed onto participants.

More transparent criteria for which incidents are to be reviewed will provide greater certainty to the market as to where the balance lies between these two competing issues.

However, by their nature, operating incidents are unpredictable, and any fixed set of criteria may not adequately capture all incidents where a review would be beneficial. Additionally, the types of incidents that may require review may change over time, as circumstances in the market change, or particular issues arise.

Accordingly the Commission has determined that it is most appropriate for the Rules to set some minimum criteria for operating incidents requiring review, with the Reliability Panel required to consider what other types of incidents may require review.

The types of incidents that the Commission considers should be specified in the Rules are:

- occurrence of a black system condition;
- system frequency outside the limits set out in the power system security and reliability standards;
- power system not in a secure operating state for more than 30 minutes;
- a non-credible or multiple contingency event in the transmission network;
- an event where *NEMMCO* issues a *clause 4.8.9 instruction for load shedding*.

The above incidents reflect the kind of incidents that *NEMMCO* already investigates, and would be considered significant deviations from normal operating conditions. The Commission also recognises however, that the above list is not necessarily exhaustive, and that adjustments may need to be made with experience. The Commission considers that the Reliability Panel has the appropriate expertise to make adjustments to the criteria for what incidents should be reviewed, and to have an ongoing role in determining whether any additional criteria may be required in the future.

5.5 Drafting of the review of operating incidents clause

In the process of considering this Rule change proposal, the Commission has also considered the drafting of the original review of operating incidents clause. The original clause itself was poorly drafted, and included ambiguity in the wording of particular subclauses.

Specific examples include:

- The definition of a reviewable incident for the purposes of the clause was “*NEMMCO* must conduct reviews of significant operating incidents or deviations from normal operating conditions”. It was not clear from this definition as to whether *NEMMCO* was required to conduct reviews of all deviations from normal operating conditions or only significant deviations from normal operating conditions.
- It was not clear whether the publication requirements in clause 4.8.15(b) related only to reviews of disconnections under clause 5.9.5 (which the rest of clause (b) relates to), or to all reviews of operating incidents.

The Commission has redrafted clause 4.8.15 with the intent of ensuring that neither the policy intent or the operation of the clause is affected, other than in respect of the Rule change proposal. The Commission is of the view that the market will benefit from simple, clear and concise Rules where possible.

5.6 Time limits for release of NEMMCO's report

What the proponent said

The proponent did not raise this issue.

What the submissions said

In its submission on the draft determination, Transend noted:

there is presently no timeframe requirements (or even benchmark timeframes) for NEMMCO to complete and publish its incident reports. More timely reports on operating incidents may be facilitated if the Rules provided for such timing requirements.

Transend proposed that the Reliability Panel's guidelines on operating incidents should also cover standard timeframes for publication of incident reports, including reasonable grounds for departure from these timeframes.

The Commission's considerations

The Commission notes that NEMMCO's Statement of Corporate Intent defines the timely publication of reports into operating incidents as a key performance indicator. NEMMCO has been reporting against KPIs since the beginning of the 2003/04 financial year.

The KPIs are:

- 75% of final reports published within 80 business days
- 100% within 120 business days
- Market Notices to be issued within 1 day of incident.
- Preliminary report on a major system incident published within 7 working days

Since December 2002, NEMMCO has produced 9 reports on operating incidents. The time taken to produce a final report on each of these is shown below:

Date of Incident	Date of Final Report	Business days elapsed
14-Mar-05	26-Aug-05	114
14-Jan-05	29-Jun-05	112
1-Dec-04	18-Mar-05	73
13-Aug-04	28-Jan-05	115
8-Mar-04	6-Jul-04	82
18-Nov-03	13-May-04	120
14-Sep-03	7-Jan-04	79
12-Dec-02	26-Aug-03	175
4-Dec-02	9-Jul-03	147

Given that NEMMCO already has the publication of operating incident reports as a KPI, the Commission needs to consider three issues:

1. Are the KPI's established by NEMMCO reasonable?
2. Are the KPIs being met?

3. Would placing an additional obligation on NEMMCO in the Rules achieve better compliance and more effective outcomes?

Operating incidents which are subject to review will vary in their impact and complexity. For some incidents, the causes can be difficult to identify, and involve the inspection and testing of equipment which cannot occur while the equipment is in service. Others may involve the investigation of interactions between different equipment. Equally, it is in the interests of all participants for the causes of operating incidents to be identified and remedied quickly. With this in mind, the timeframes proposed by NEMMCO in their KPIs appear reasonable.

Equally, there is little evidence that NEMMCO is failing to meet the intent of the KPIs it has established. All reports in the previous two years have been completed within the 120 business day KPI. While NEMMCO has not met its KPI on the tighter 80 day timeframe in the past 2 years, the ability to complete reports within 80 days will be dependent on the complexity of the incident.

It should be noted that the changes introduced by this Rule are likely to result in a greater number of less serious incidents being investigated, as well as more rapid response from participants. This, in turn, should allow many reports to be completed in a more timely manner.

The Commission also considers it unlikely that elevating the KPI requirements into the Rules will have a significant impact on the timeliness of the production of operating incident reports. NEMMCO already faces a reputational risk if it fails to meet its established KPIs. It is unlikely that the elevation of the requirement to the Rules would provide a significantly stronger incentive for compliance than that which is already on NEMMCO.

Notwithstanding the above, the Commission recognises that NEMMCO's established KPIs do not have the force of the Rules. If the operating incident report KPI were to be removed, or if NEMMCO failed to meet its KPI with regard to operating incident reports, the Commission would give positive consideration to a Rule proposal to establish this obligation in the Rules.

The Commission's finding in relation to this issue

The Commission has determined that the Rule should not include a time limit on NEMMCO for the publication of operating incident reports.

6. Commission's consideration and reasoning in relation to the Rule Making Test

The Rule making test requires the Commission to be satisfied that a Rule that it proposes to make will contribute to the achievement of the NEM objective.

6.1 Assessment against Rule making test

The Rule making test requires the Commission to consider the implications of the proposed new Rule, for the efficient investment in, and efficient use of these electricity services, in respect of specified elements which impact on the long term interests of consumers of electricity. The Commission has applied the Rule making test to the proposed new Rule, as modified by the outcomes of analysis and discussion in section 5 above (the final Rule).

Information from participants is often critical to the process of an investigation into an operating incident and a time limit will ensure that this information is provided to NEMMCO in a reasonably timely manner. By specifying time limits on responses to requests for information, the Rule change should lead to more timely production of NEMMCO reports on operating incidents.

The Commission considers that there are benefits to the market in these reports being provided as quickly as possible.

At one level, by providing for a more timely release of reports into operating incidents, NEMMCO and market participants can better understand the events that led to a particular incident more quickly. This should ensure that recommendations that result from particular incidents can be implemented in a timely manner, and minimise the likelihood that a similar incident could occur before recommendations are able to be implemented to resolve the issue.

At a broader level, a faster review of operating incidents will provide more timely information to investors and market participants on the reliability and security of the NEM. This better quality information may improve the investment climate by reducing any perceived risk on the operation of the market and the power system. Alternatively, this better quality information may clarify any longer term constraints or limitations in the NEM, and therefore provide a better signal for the need for additional investment.

While the Rule change does provide a minor additional burden on market participants to provide information about their equipment in a limited time, in the view of the Commission this is outweighed by the benefits of more timely reports on operating incidents.

While the Commission recognises that these benefits are arguably marginal, and therefore the contribution of the proposed Rule change to the market objective is therefore also marginal, the Commission is satisfied that they represent improvements in the quality and reliability of information available to NEM participants, and that they will therefore improve the efficiency of the NEM in the long term interests of consumers of electricity.