



Australian Energy Market Commission

Draft Rule Determination

**National Electricity Amendment (Performance
Standard Compliance of Generators) Rule
2008**

Rule Proponent
National Generators Forum (NGF)

26 June 2008

Signed: 

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For and on behalf of
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About the AEMC

The Council of Australian Governments, through its Ministerial Council on Energy, established the Australian Energy Market Commission (AEMC) in July 2005 to be the Rule maker for national energy markets. The AEMC is currently responsible for Rules and policy advice covering the National Electricity Market. It is a statutory authority. Our key responsibilities are to consider Rule change proposals, conduct energy market reviews and provide policy advice to the Ministerial Council as requested, or on AEMC initiative.

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Abbreviations

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
Commission	see AEMC
MCE	Ministerial Council on Energy
MNSP	Market Network Service Provider
NSP	Network Service Provider
NEL	National Electricity Law
NEM	National Electricity Market
NEO	national electricity objective
NEMMCO	National Electricity Market Management Company
Rules	National Electricity Rules
TNSP	Transmission Network Service Provider

Summary

On 14 February 2008, the National Generators Forum (NGF) lodged a Rule change proposal regarding the compliance with performance standards by Generators. The proposal is primarily in response to the Final Report of the AEMC Review of Enforcement of and Compliance with Technical Standards, 1 September 2006 (“2006 Review Report”).

The Rule change proposal can be divided into six sections:

- requiring a generator to have (and modify as necessary) a compliance program that is based on defined guidelines or a template issued by the Reliability Panel and that the guidelines or a template should be updated using experience gained during significant power system events;
- allowing participants to seek a review from the Australian Energy Regulator (AER) regarding the time allowed by National Electricity Market Management Company (NEMMCO) for non-conformances to be rectified;
- clarifying that NEMMCO must advise the AER of any non-conformance with performance standards;
- allowing registered performance standards to be adjusted where all relevant parties agree;
- clarifying that the requirement to adopt and implement compliance programs and other obligations under rule 4.15 is exclusively related to the operation of registered performance standards (and not the operation of that plant more generally, which is dealt with elsewhere in the Rules); and
- renaming “non-compliance” and “breach” to “non-conformance” (and any other like terms) under rule 4.15.

The Australian Energy Market Commission (Commission) published the Rule change proposal in accordance with section 95 of the National Electricity Law (NEL) and submissions closed on 4 April 2008. The Commission received three submissions at this stage of consultation.

The Commission is satisfied that the Draft Rule will promote the National Electricity Objective (NEO) and has decided to make a draft Rule under section 99 of the NEL. The Commission considers the Draft Rule will satisfy the NEO as it:

- will promote efficient operation and use of electricity services by establishing a framework where the processes are clearly defined, clarifying the process for determining the timeframe for Registered Participants to rectify breaches of performance standards, clarifying the roles of the AER and NEMMCO where there is a breach of performance standards, allowing for a process to correct performance standards which are found to be incorrect, clarifying that rule 4.15(a) applies to the operation of the plant covered by performance standards,

including NSPs in the process of developing the template for generator compliance programs; and

- will promote reliability, safety and security of the NEM by providing NSPs with information relating to the performance of generators.

In coming to this decision, the Commission has considered the Rule Change Proposal, stakeholder submissions and the requirements under the NEL.

This Draft Determination has approved some of the NGF's proposed Rule changes in part and proposes other Rule changes to address stakeholder issues, and reaches the following conclusions:

1. the Reliability Panel will develop the template for generator compliance programs based on a rigorous consultation process and review this template within a defined time period in accordance with clause 8.8.3 of the Rules every three years;
2. the AER will be responsible for accepting or rejecting compliance programs;
3. Registered Participants can seek a review from the AER regarding the time allowed by NEMMCO for participants to rectify breaches of performance standards and the AER will determine an appropriate timeframe in the event of a dispute;
4. NEMMCO must advise the AER of any breach with performance standards, including when NEMMCO reasonably believes the Registered Participant may have breached performance standards but NEMMCO has not been notified;
5. registered performance standards will be adjusted where all relevant parties (i.e. NEMMCO, the relevant participant and the relevant NSP) agree;
6. rule 4.15 is exclusively related to the operation of registered performance standards (and not the operation of that plant in general);
7. the terms "non-compliance" and "breach" (and any other like terms) under rule 4.15 are retained; and
8. NSPs will be involved in the development and approval of the template for generator compliance programs, and NSPs are able to access information on generator performance.

In accordance with section 101 of the NEL, any interested person or body may request that the AEMC hold a hearing in relation to the Draft Rule and Draft Determination. Any request must be received no later than 3 July 2008.

Submissions on the Draft Rule and Draft Determination should be received by 8 August 2008.

Send submissions electronically to submissions@aemc.gov.au

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1 The NGF Rule Change Proposal

On 14 February 2008, the NGF lodged a Rule change proposal regarding the compliance with performance standards by Generators (Proposed Rule). The proposal is primarily in response to the 2006 Review Report.¹

1.1 Summary of the Rule Change Proposal

The NGF Rule change proposal can be divided into six sections:²

1. “requires a generator to have (and modify as necessary) a compliance program that is based on defined guidelines [or a template] issued by the Reliability Panel and that the guidelines [or a template] should be updated using experience gained during significant power system events”;
2. “allows participants to seek review from the AER regarding the time allowed by NEMMCO for non-conformances to be rectified”;
3. “clarifies that NEMMCO must advise the AER of any non-conformance with performance standards”;
4. “allows registered performance standards to be adjusted where all relevant parties agree”;
5. “makes it clear that the requirement to adopt and implement compliance programs and other obligations under rule 4.15 [is] exclusively related to the operation of registered performance standards and not the operation of that plant more generally, which is dealt with elsewhere in the Rules”; and
6. renames “non-compliance” and “breach” (and any other like terms) under rule 4.15 of the Proposed Rule.

1.1.1 Framework for compliance program

The NGF’s proposed Rule aims to address Recommendations 4 and 5 of the 2006 Review Report.³ The NGF suggests that these two recommendations relate to “the framework for compliance programs in the existing Rules [which] may not be effective in establishing and maintaining compliance with performance standards”.⁴

The NGF considers that its Proposed Rule addresses this issue by requiring “Registered Participants to institute a compliance program that conforms with

¹ The Final Report of the AEMC Review of Enforcement of and Compliance with Technical Standards can be found on <http://www.aemc.gov.au/electricity.php?r=20051216.173039>.

² The NGF Rule change proposal, 14 February 2008, Pp.3-4.

³ See Appendix B in this document for details of these recommendations.

⁴ The NGF Rule change proposal, p.2.

guidelines [or a template] issued by the Reliability Panel”.⁵ Instead of the AEMC’s proposal in the 2006 Review Report that the AER would approve generator compliance programs, the NGF offers an alternative approach. This is because the NGF suggests that the AER “considered that it was inappropriate for them to both approve and then audit compliance with plans”.⁶ This alternative approach would entail the following:

- “The Reliability Panel, in keeping with their responsibilities to define transmission service standards, approve a template or guideline for generator compliance plans;
- The template would be:
 - developed with the assistance of participants and NEMMCO;
 - effectively define “good industry practice” for the purposes of the Rules;
 - allow the AER to audit compliance with the Rules in advance of incidents; and
 - allow for improvement in compliance plans based on market experience; and
- Generators have an obligation to develop and maintain [compliance] plans using the template.”⁷

1.1.2 Timeframe for rectification of non-conformance

The NGF considers that the issues relating to Recommendations 7 and 8 of the 2006 Review Report⁸ are:

- “the existing Rule 4.15(i) does not make clear that a participant has an obligation to rectify non-conformance with a performance standard within a set period of time”;⁹ and
- “in the event that the time period for such rectification is disputed, the existing dispute resolution provisions in the Rules may not provide a sufficiently rapid outcome”.¹⁰

The NGF considers that its Proposed Rule addresses these issues by clarifying the wording of rule 4.15(i) which “permits the AER to determine an appropriate timeframe for rectification of non-conformance in the event of a dispute”.¹¹ It states that “[t]he dispute resolution mechanism will produce faster resolution of

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ See Appendix B in this document for details of these recommendations.

⁹ The NGF Rule change proposal, p.2.

¹⁰ Ibid., Pp.2-3.

¹¹ Ibid., p.3.

disagreements between NEMMCO and the Registered Participant concerning the timeframe for rectification of non-conformance than is the case under the existing Rules".¹²

1.1.3 Responsibilities of the AER and NEMMCO with respect to enforcement of Rule breaches

The NGF considers that its Proposed Rule addresses Recommendation 9 of the 2006 Review Report.¹³ In the NGF's view, the objective of this recommendation is to ensure "that the Rules do not confuse the responsibilities of the AER and NEMMCO with respect to enforcement of Rule breaches".¹⁴

On this basis, the Proposed Rule "requires NEMMCO to notify the AER of any notification it receives regarding non-conformance".¹⁵ It states that this "ensures that NEMMCO does not become a de facto decision maker as to whether certain conduct (or omissions) constitute a breach of the Rules".¹⁶

1.1.4 Changing performance standards

In addition to the recommendations in the 2006 Review Report, the NGF raises a new issue that it became aware of during the development of its Rule change proposal. It suggests that "the existing Rules do not contain a provision that readily allow for the correction of performance standards found to be incorrect".¹⁷ In particular, the NGF considers rule 4.15 and clause 5.3.8 do not facilitate a process to change performance standards.

To address this issue, the Proposed Rule "allows for the amendment of a performance standard at any time provided that NEMMCO, the relevant participant and the relevant NSP all agree".¹⁸ Furthermore, it considers that "[t]his process allows for the timely correction of performance standards that are incorrect".¹⁹

1.1.5 Exclusive application of rule 4.15(a) to operation of plant specifically covered by performance standards

The other new issue that the NGF proposes, not covered in the 2006 Review Report, is that rule 4.15(a) be clarified so that it "relates to operation of plant that is

¹² Ibid.

¹³ See Appendix B in this document for details of these recommendations.

¹⁴ The NGF Rule change proposal, p.3.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

specifically covered by performance standards rather than applying to the operation of that plant more generally, a matter which is dealt with elsewhere in the Rules".²⁰

The NGF considers this clarification can be achieved by rewording rule 4.15, "that the rule relates specifically to the operation of plant covered by the relevant performance standards".²¹

1.1.6 Rename "non-compliance" and "breach"

The NGF also proposes that the term "non-conformance" be used in place of the term "non-compliance" and "breach". It states that this would "make it clear that a variation from a performance standard is not automatically a breach of the Rules".²² Similarly, it proposes to replace the terms "compliance" with "conformance", "comply" with "conform", and any other like terms.

1.2 Context and Background

Compliance with technical standards is crucial to ensuring power system security in the National Electricity Market (NEM). Ensuring high levels of compliance with effective standards is fundamental to the safe and reliable operation of the power system within the power system's technical envelope. If this were not the case, the risk of a major power system incident would materially increase.²³

On 22 November 2005, the Commission received a direction from the Ministerial Council on Energy under Part 4, Division 4 of the NEL, to conduct a review into the enforcement of, and compliance with, the technical standards under the Rules. Following this direction, the Commission initiated a review. The final report of the review was completed on 1 September 2006.

In the 2006 Review Report, the Commission included a comprehensive program in its recommendations for the review to bring together a satisfactory way forward covering the enforcement and compliance of technical and performance standards.²⁴

The Proposed Rule refers to recommendations 4, 5, 7, 8 and 9 contained in the 2006 Review Report.²⁵ The NGF considers that these recommendations require changes to the Rules.²⁶

²⁰ Ibid.

²¹ Ibid.

²² Ibid., Pp.3, 9-14.

²³ The Final Report of the AEMC Review of Enforcement of and Compliance with Technical Standards, 1 September 2006 ("2006 Review Report"), p.4.

²⁴ Ibid., p.5.

²⁵ See Appendix B in this document for details of these recommendations.

²⁶ The NGF Rule change proposal, p.2.

1.3 Consultation on the NGF proposal

On 6 March 2008, under section 94 of the NEL, the Commission decided to commence initial consultation on the NGF Rule change proposal by publishing a notice under section 95 of the NEL.

The NGF had requested that this Rule change proposal be “fast tracked” under section 96A of the NEL. However, the Commission did not accept this request as it considered that all elements of the proposal did not sufficiently satisfy the conditions under section 96A of the NEL, in particular:

- with respect to references in the proposal to recommendations in the 2006 Review Report, the Rule change proposal offers different solutions to these recommendations; and
- the Rule change proposal identified some problems in addition to these problems identified in the 2006 Review Report and has suggested proposed solutions.

The Rule change proposal was open for public consultation for four weeks. Submissions closed on 4 April 2008.

The Commission received three submissions on the Rule change proposal at the first round of consultation, which are available on the AEMC website.²⁷ The Commission received submissions from:

- NEMMCO;
- Grid Australia;²⁸ and
- VENCORP.

The submissions from Grid Australia and NEMMCO were broadly supportive of the NGF Rule change proposal. However, all of the submissions sought further amendments to the NGF proposal. These are discussed further in section 3 of this Draft Determination.

Following the first round of submissions, the NGF made a supplementary submission. This submission clarified its Rule change proposal as well as providing its response to the other submissions.

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

In addition, no public hearing has been held on this Rule change proposal to date.

²⁷ These submissions can be found at <http://www.aemc.gov.au/electricity.php?r=20080228.150735>

²⁸ The submission (4 April 2008) from Grid Australia, previously known as Electricity Transmission Network Owners Forum (ETNOF), comprised of ElectraNet, Powerlink Queensland, SP AusNet, Transend Networks and TransGrid.

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2 Methodology for developing the Draft Rule determination

The Commission has determined in accordance with section 99 of the NEL to make, with amendments, the Draft Rule. A draft of the Rule to be made (the Draft Rule), which is different to the proposed Rule put forward by the proponent, is attached to this determination.

This determination sets out the Commission's reasons for making the Draft Rule. The Commission has taken into account:

1. the Commission's powers under the NEL to make the Rule;
2. the proponent's Rule change proposal and proposed Rule;
3. submissions received; and
4. the Commission's analysis as to the ways in which the Rule will or is likely to contribute to the promotion of the national electricity objective (NEO) so that it satisfies the statutory Rule making test.

2.1 The Commission's power to make the Rule

The Commission is satisfied that the Draft Rule falls within the subject matters for which the Commission may make Rules, as set out in section 34 of the NEL and in Schedule 1 to the NEL.

The Draft Rule relates specifically to item 34(1) of the NEL, which states that:

"...the AEMC, in accordance with this Law and the Regulations, may make Rules, to be known, collectively, as the "National Electricity Rules", for or with respect to –

(a) regulating –

...

- (ii) the operation of the national electricity system for the purposes of the safety, security and reliability of that system;
- (iii) the activities of persons (including Registered participants) participating in the national electricity market or involved in the operation of the national electricity system;"

The Draft Rule also falls under the following subject matter items under Schedule 1 to the NEL, namely:

- item 11. the operation of generating systems, transmission systems, distribution systems or other facilities;
- item 30. disputes under or in relation to the Rules between persons, including –

- (a) the appointment of a person, in accordance with the Rules, to manage and facilitate the resolution of such disputes;
- (b) the appointment, by a person referred to in paragraph (a), of persons (including mediators and arbitrators) to resolve such disputes;
- (c) the procedure for the conduct of such disputes;
- (d) the provision for appeals on questions of law against decisions of persons appointed to resolve such disputes.

item 33. reviews by or on behalf of—

- (a) the AER, the AEMC or NEMMCO; or
- (b) the Reliability Panel or any other panel or committee established by the AEMC; or
- (c) any other body established, or person appointed, in accordance with the Rules.

item 34B. reporting and disclosing information to the AER.

2.2 Assessment of the Draft Rule: the Rule making test and the national electricity objective

2.2.1 General

The Rule making test requires the Commission to be satisfied that a Rule that it proposes to make will contribute to the national electricity objective (NEO).

The test requires the Commission to consider the implications of the proposed new Rule, for efficient investment in, and efficient operation and use of, electricity services, in respect of:

- (a) price, quality, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the NEM,

which impact on the long term interests of end users of electricity.

2.2.2 The NGF Rule change proposal

The NGF has provided a statement addressing how its Rule change proposal will or is likely to contribute to the NEM objective. The NEM objective has now been renamed as the NEO under the new NEL. However, the objective has not changed. The NGF has suggested that its proposal will contribute to the NEO in the following ways:

- “promotes efficient investment in electricity services by clarifying the obligations imposed upon participants in relation to conformance with performance standards and the monitoring of compliance [with these performance standards]”;²⁹
- “influence participants to make efficient investments regarding compliance with performance standards and regarding the implementation of monitoring programs to ensure such compliance”;³⁰
- “compliance with these performance standards is relevant to the quality, reliability and security of the supply of electricity” as the “performance standards are the agreed standards of performance in respect of the technical standards set out in the Schedules 5.1, 5.2, 5.3 and 5.3a of the Rules”;³¹ and
- implement recommendations from the 2006 Review Report where the “2006 AEMC Review expressly states that its recommendations are consistent with the NEM Objective”.³²

The NGF has also provided a statement addressing the expected benefits and costs of its Rule change proposal and the potential impacts of the change on those likely to be affected. The NGF suggests that the expected benefits of its Rule change proposal include:³³

- “[g]reater compliance with the performance standards and consequent increases in quality, reliability and security of the supply of electricity to the NEM (as a result of the establishment of a process for the implementation and maintenance of compliance monitoring programs)”;
- “[g]reater efficiency in NEMMCO's management of the NEM and the AER's enforcement of the Rules (as a result of clarifications and improvements to existing provisions concerning notification of non-conformances with performance standards)”;
- “[m]ore accurate enforcement of compliance with the Rules (as a result of allowing incorrect performance standards to be corrected at any time)”.

In terms of the expected costs of the NGF Rule change proposal, the NGF includes the following:³⁴

- “[s]mall increases in the cost to generators of complying with the Rules (as a result of the institution and monitoring of compliance monitoring programs by generators)”;

²⁹ The NGF Rule change proposal, 14 February 2008, p.4.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid., p.5.

³⁴ Ibid.

- “[s]mall increases in the cost to the Reliability Panel of meeting its obligations under the Rules (as a result of its preparation of compliance monitoring guidelines [or a template])”.

The NGF suggests that the implementation of the Rule change proposal “would ... likely affect generators, the AER and NEMMCO”.³⁵ In particular:³⁶

- “Generators are likely to ... implement and maintain compliance monitoring programs (as a result of the amended provisions for the implementation of these programs)”;
- “Generators are likely to ... improve their compliance with performance standards (as a result of the implementation and maintenance of compliance monitoring programs and the ability to alter incorrect performance standards at any time)”;
- “NEMMCO is likely to ... have more accurate information as to the performance of plant connected to the NEM (as a result of the amendments to the provisions requiring notification of non-conformances with performance standards)”;
- “NEMMCO is likely to ... be able to manage the NEM more efficiently (as a result of having more accurate information)”;
- “the AER is likely to ... receive more timely information as to non-conformance by participants with their performance standards (as a result of the amendments to the notification provisions)”;
- “the AER is likely to ... be in a position to more effectively enforce the Rules (as a result of having timely information regarding non-conformance with performance standards)”.

2.2.3 The Commission’s test of the national electricity objective

Quality, reliability and security of the supply of electricity is achieved by establishing a framework where the processes are clearly defined, including the roles of the Reliability Panel, the AER, NEMMCO and Registered Participants. By implementing this framework, the efficient operation and use of electricity services are more likely to be met. Such a framework should promote increased reliability, safety and security of the NEM and, as the NGF states, “influence participants regarding compliance with performance standards and regarding the implementation of monitoring programs to ensure such compliance”.³⁷ Therefore, the Commission considers the implementation of the template for generator compliance programs will promote the NEO.

³⁵ Ibid.

³⁶ Ibid., Pp.5-6.

³⁷ Ibid., p.4.

Clarifying the process for determining the timeframe for Registered Participants to rectify breaches of performance standards promotes efficient operation and use of electricity services. This is achieved by providing certainty to NEMMCO, the AER and Registered Participants on the process. As a result, quality, reliability and security of supply of electricity services will be achieved. Therefore, the Commission considers the timeframe for Registered Participants to rectify breaches of performance standards promotes the NEO.

Clarifying the roles of the AER and NEMMCO where there is a breach of performance standards ensures efficient operation and use of electricity services. This will also result in the AER and NEMMCO being able to promote reliability, safety and security of the NEM. For participants, they will have certainty in understanding the role of the AER and NEMMCO. This will result in efficient investment by participants in complying with the performance standards. Therefore, the Commission considers the clarification of the roles of the AER and NEMMCO where there is a breach of performance standards promotes the NEO.

A provision to allow for a process to correct performance standards which are found to be incorrect ensures robust and relevant performance standards. As a consequence, the quality, reliability and security of the supply of electricity will be achieved. Likewise, this will result in meeting the reliability, safety and security of the NEM. Therefore, the Commission considers a process to correct performance standards which are found to be incorrect promotes the NEO.

Clarifying that rule 4.15(a) applies to the operation of the plant covered by performance standards (and not the general operation of the plant) allows for greater certainty in the application of the rule. This, in turn, promotes the efficient operation and use of the electricity services. Therefore, the Commission considers clarifying rule 4.15(a) promotes the NEO.

Including NSPs in the process of developing the template for generator compliance programs will improve the efficiency of the operation of NSPs. This will mean there will be more certainty in the process which will improve the quality, reliability and security of the supply of electricity, and reliability, safety and security of the NEM.

Grid Australia also states that if NSPs are not provided with information relating to the performance of generators, NSPs will be unable to “discharge their power system security responsibilities”.³⁸ Therefore, NSPs being informed will allow reliability, safety and security of the NEM to be achieved.

Therefore, the Commission considers the inclusion of NSPs in the development of the template for generator compliance programs, and being informed of the performance of generators promotes the NEO.

In the 2006 Review Report, the Commission stated that “the conclusions and recommendations contained in this [final] report are consistent with the NEM objective and should advance the long term interests of consumers, by clarifying

³⁸ Grid Australia submission, 4 April 2008, p.2.

standards and promoting greater compliance with those standards”.³⁹ To this extent, the Draft Rule broadly accepts the proposed Rule, with amendments. The Commission has applied the Rule making test to the Draft Rule, as modified by the outcomes of analysis and discussion in section 3 of this Draft Determination. The Commission is satisfied that the Draft Rule is likely to promote the NEO. Appendix A presents the Commission’s reasoning as to the issues raised by the NGF proposal.

2.3 Differences between Proposed Rule and Draft Rule

The Commission has adopted some of the NGF’s proposed Rule changes in part and proposes other Rule changes to address stakeholder issues. These include clarifying how the Reliability Panel will develop the template for generator compliance programs and the role of the AER in relation to this, NEMMCO’s role in advising the AER when performance standards may be breached, retaining the terms “non-compliance” and “breach” (and any other like terms) under rule 4.15, and involving NSPs in the development of the template for generator compliance programs.

The Draft Rule specifies that:

- the Reliability Panel will be responsible for developing the template for generator compliance programs based on a rigorous consultation process and will review this template within a defined time period in accordance with clause 8.8.3 of the Rules every three years;
- the AER will be responsible for accepting or rejecting compliance programs;
- NEMMCO will advise the AER of any breach with performance standards, including when NEMMCO reasonably believes the Registered Participant may have breached performance standards but NEMMCO has not been notified;
- the terms “non-compliance” and “breach” (and any other like terms) under rule 4.15 will be retained; and
- NSPs will be involved in the development and approval of the template for generator compliance programs, and NSPs will be able to access information on generator performance.

Subject to the above amendments, the Commission has accepted the NGF’s proposed Rule for generator compliance with performance standards.

³⁹ 2006 Review Report, p.74.

A Commission's analysis of the Proposed Rule

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

In summary, there are seven areas covered in this Draft Determination:

1. “requires a generator to have (and modify as necessary) a compliance program that is based on defined guidelines [or a template] issued by the Reliability Panel and that the guidelines [or a template] should be updated using experience gained during significant power system events”;⁴⁰
2. “allows participants to seek review from the AER regarding the time allowed by NEMMCO for non-conformances to be rectified”;⁴¹
3. “clarifies that NEMMCO must advise the AER of any non-conformance with performance standards”;⁴²
4. “allows registered performance standards to be adjusted where all relevant parties agree”;⁴³
5. “makes it clear that the requirement to adopt and implement compliance programs and other obligations under Rule 4.15 [is] exclusively related to the operation of registered performance standards and not the operation of that plant more generally, which is dealt with elsewhere in the Rules”;⁴⁴
6. rename “non-compliance” and “breach” to “non-conformance” (and any other like terms) under Rule 4.15;⁴⁵ and
7. involve NSPs in the development of the template for generator compliance programs,⁴⁶ and being able to access information on generator performance.⁴⁷

In developing the Draft Rule, the Commission has examined a number of issues, including:

- whether the Rule change proposal and submissions are consistent with the Commission’s position in the 2006 Review Report and, if not, whether there are valid reasons to deviate from that position;

⁴⁰ The NGF Rule change proposal, 14 February 2008, p.2.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Grid Australia submission, Pp.1-4; NEMMCO submission, 4 April 2008, p.4; VENCORP submission, 18 April 2008, Pp.1-2.

⁴⁷ Grid Australia submission, Pp.1-4.

- whether any other parts of the Rules would be affected if any changes were accepted;
- whether it is within the Reliability Panel’s or the AER’s responsibility to approve a template for generator compliance programs;
- whether the proposed process for changing performance standards is appropriate;
- whether the general operation of plants are covered elsewhere in the Rules if rule 4.15 only applies specifically to the operation of plant covered by the relevant performance standards;
- whether it is appropriate to rename “non-compliance” and “breach” to “non-conformance” (and any other like terms) under rule 4.15; and
- whether there are any issues if NSPs were to be included in the development of the template for generator compliance programs.

This section details the Commission’s analysis and reasons underlying its Draft Rule in relation to each of the issues identified above.

A.1 Framework for compliance programs

A.1.1 The NGF proposal

The NGF suggests that “the framework for compliance programs in the existing Rules may not be effective in establishing and maintaining compliance with performance standards”.⁴⁸ It considers this as a common issue under recommendations 4 and 5 from the 2006 Review Report.

To implement recommendations 4 and 5, the NGF proposes a variation to these recommendations from the 2006 Review Report:⁴⁹

- “The Reliability Panel, in keeping with their responsibilities to define transmission service standards, approve a template or guideline for generator compliance plans;
- The template would be:
 - developed with the assistance of participants and NEMMCO;
 - effectively define “good industry practice” for the purposes of the Rules;
 - allow the AER to audit compliance with the Rules in advance of incidents; and

⁴⁸ The NGF Rule change proposal, p.2.

⁴⁹ Ibid.

- allow for improvement in compliance plans based on market experience; and
- Generators have an obligation to develop and maintain plans using the template.”

A.1.2 Submissions

A.1.2.1 Grid Australia

Grid Australia proposes a minor editorial change to the NGF proposed clause 5.7.3 so it refers to the NGF proposed rule 4.15.⁵⁰ It points out that rule 4.15 “already sets out the relevant time periods for new and existing plant “. ⁵¹ It proposes referring in clause 5.7.3 to rule 4.15 instead of specifying the period to be “within 6 months”.⁵²

A.1.2.2 NEMMCO

NEMMCO stated that it “strongly supports the NGF's proposed method” in establishing guidelines for compliance monitoring programs because it considers:⁵³

- “it would ensure the programs are established in a consistent manner”; and
- “it provides a mechanism that allows these programs to be improved by taking into account experience and improvements in monitoring and testing techniques”.

NEMMCO proposes further amendments to clause 8.8.3 in addition to the NGF proposed clause 8.8.1 to “ensure that the establishment of guidelines ... are incorporated into the Reliability Panel’s processes”.⁵⁴ An additional proposal from NEMMCO is for the Reliability Panel to review the “compliance program guidelines” in accordance with clause 8.8.3 “at least every calendar year”.⁵⁵

It also notes that the term “reviewable operating incidents’ has been italicised in the ... [NGF] Rule change proposal ... but it has not been given a corresponding definition in Chapter 10”.⁵⁶ NEMMCO suggests “[d]epending on the intention of the phrase, it may be simpler not to italicise [the term]”.⁵⁷

NEMMCO suggests that a “possible ... situation could occur where a connection agreement states that under certain conditions the plant has an operating restriction

⁵⁰ Grid Australia submission, p.2.

⁵¹ Ibid.

⁵² Ibid.

⁵³ NEMMCO submission, p 2.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

for non-scheduled plant that is not reflected in the performance standards”.⁵⁸ Therefore, it proposes amendments “to capture both the technical requirements of clause S5.2.5 and the relevant connection agreement” in these situations in the NGF’s proposed clause 5.7.3.⁵⁹

NEMMCO supports the NGF’s proposed clause 8.8.1(a)(2b) because it considers that “it would ensure the Reliability Panel, in determining or modifying compliance program guidelines, takes into consideration ... the parties affected”.⁶⁰ It also proposes that advice should be sought from NSPs in the process since NSPs are involved.⁶¹ This issue regarding NSPs is discussed in section A.7.

A.1.2.3 VENCORP

VENCORP “supports the NGF’s suggestion that the Reliability Panel and not the AER be responsible for issuing the guidelines [for generator compliance programs]”.⁶² It considers that “this will avoid any conflicts arising from the AER in both approving and auditing compliance programs”.⁶³

VENCORP seeks flexible guidelines which it considers will allow for the inclusion of “localised performance standards”.⁶⁴ It raises the following issues if localised performance standards are omitted from the guidelines:⁶⁵

- “variation between the guidelines and localised planning and operational issues”; and
- “likely to have a negative impact on in each of the relevant jurisdictions in the NEM”.

It provides an example of a localised performance standard, which is “a control scheme which prevents overloading of non-scheduled assets”.⁶⁶

VENCORP recommends that “the Reliability Panel should consult with the relevant NSP”.⁶⁷ It considers that this will “ensure that all essential localised performance standards are incorporated during the development of the guidelines”.⁶⁸

⁵⁸ Ibid., p.3.

⁵⁹ Ibid.

⁶⁰ Ibid., p.4.

⁶¹ Ibid.

⁶² VENCORP submission, p.2.

⁶³ Ibid.

⁶⁴ Ibid., p.1.

⁶⁵ Ibid., p.2.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

Subsequent to the VENCORP submission, the NGF indicated that it disagrees with VENCORP's proposal for the inclusion of localised performance standards.⁶⁹

A.1.3 The Commission's consideration and reasoning

A.1.3.1 Proposed new role of the Reliability Panel

In the 2006 Review Report, the purpose of recommendations 4 and 5 were described as follows:⁷⁰

- Recommendation 4 places a requirement on the AER to issue guidelines setting out specific requirements for Registered Participants who are required to submit compliance programs under rule 4.15(b); and
- Recommendation 5 proposes a new framework for determining compliance programs. It includes the AER in role of assessor of the compliance program.

Although the NGF supports the establishment of a compliance program for performance standards for Generators, the NGF's solution differs from the recommendations of the 2006 Review Report. In particular, the NGF proposes a compliance program:⁷¹

- which "is based on defined guidelines [or a template] approved and issued by the Reliability Panel" (as opposed to the AER); and
- with a template or guideline "updated using experience gained during significant power system events" by the Reliability Panel, as the NGF argues this would be consistent with the Panel's "responsibilities to define transmission service standards".

NEMMCO and VENCORP support this proposed new role for the Reliability Panel.⁷²

It is questionable whether "transmission service standards" are part of the Panel's responsibilities as it is not listed under the functions of the Reliability Panel in clause 8.8.1(a) of the Rules. Hence, this is the reason why the NGF proposes to insert a new clause under clause 8.8.1 to clarify this (and NEMMCO proposes further amendments to clause 8.8.3).

The template for generator compliance programs and transmission service standards are not related. The template relates to compliance programs for generators. If the template is compliance-related then it should fall under the functions and powers of the AER.

⁶⁹ The NGF supplementary presentation, p.6.

⁷⁰ 2006 Review Report, p.83.

⁷¹ The NGF Rule change proposal, Pp.2-3.

⁷² VENCORP submission, p.2; NEMMCO submission, Pp.2, 4.

The 2006 Review Report states that while the guidelines may contain technical content, the guidelines are essentially concerned with compliance which would make the AER the more appropriate body to oversee its development.⁷³ The key objectives identified in the 2006 Review Report were to ensure effective enforcement by:⁷⁴

- the AER being responsible for accepting or rejecting compliance programs; and
- the AER being able to seek the technical advice of NEMMCO when making those decisions.

Furthermore, section 15(1)(eb) of the NEL provides that the AER has the power “to approve compliance programs of service providers relating to compliance by service providers with this Law or the Rules”. This provision of the NEL supports the 2006 Review Report that the AER should be responsible for the template for generator compliance programs, which are incidental to the compliance programs.

The 2006 Review Report also states that the guidelines should be developed subject to the Rules consultation procedures to provide greater clarity and certainty concerning compliance for all parties.⁷⁵ A limitation of the Rules consultation procedures is the set timeframe in which a review is to be undertaken. Clause 8.8.3 is more appropriate as it allows for the Reliability Panel and Commission to determine a suitable timeframe to complete a review.

Additionally, NEMMCO’s proposal for the Reliability Panel to review “compliance programs guidelines” on an annual basis⁷⁶ would be difficult to achieve in practice. Instead, the template for generator compliance programs should be reviewed on a cycle of three years or as determined by the Reliability Panel or Commission.

A.1.3.2 Other proposals relating to the framework for compliance programs

With respect to Grid Australia’s proposal for a minor editorial change to new clause 5.7.3,⁷⁷ referring to the NGF’s proposed rule 4.15 clarifies the relationship between rule 4.15 and clause 5.7.3. The NGF suggests that the original Code change intended to remove clause 5.7.3 once rule 4.15 was in place.⁷⁸

NEMMCO’s proposed changes to clauses 5.7.3(c) and (d) is a new proposal aimed to address the scenario for the plant having an operating restriction which is not reflected in the performance standards. This is a minor editorial change. Although the NGF prefers that clause 5.7.3 be removed once rule 4.15 was in place,⁷⁹ NEMMCO’s proposal broadens the application of clause 5.7.3. This means that

⁷³ 2006 Review Report, p.46.

⁷⁴ Ibid., p.45.

⁷⁵ Ibid., p.46.

⁷⁶ NEMMCO submission, p.2.

⁷⁷ Grid Australia submission, p.2.

⁷⁸ The NGF Rule change proposal, p.13.

⁷⁹ The NGF supplementary presentation, p.6.

clause 5.7.3 focuses on the connection agreement in addition to the performance standard. Rule 4.15 and clause 5.7.3 are therefore distinguishable and means that clause 5.7.3 is still relevant and should be retained.

NEMMCO's proposal not to italicise "reviewable operating incidents" is a minor editorial amendment. However, clause 4.8.15 already defines "reviewable operating incidents".

The Commission notes VENCORP's proposal to include localised performance standards in the development of performance standards relates to the content in a performance standard. Clause 8.8.1(a)(2a), as proposed by the NGF and amended by NEMMCO, requires the Reliability Panel to consult with NSPs when it develops the template for generator compliance programs.

A.1.4 The Commission's finding in relation to this issue

The Commission notes that the Proposed Rule implements recommendations 4 and 5 with amendments from submissions.

The Commission accepts the proposal for the Reliability Panel to review the template for generator compliance programs, subject to the following conditions:

- that the Reliability Panel will only approve the template for generator compliance programs and will not be responsible for compliance with the template;
- that the AER will be responsible for accepting or rejecting compliance programs;
- that the development of the template will be based on a rigorous consultation process in accordance with clause 8.8.3 of the Rules;
- that the template will be consistent with the definition of "good electricity industry practice" as set out in the Rules;
- that the review cycle of the template will be every three years or earlier if the Reliability Panel or Commission believes this is warranted; and
- that a time period will be specified for the review of the template in accordance with clause 8.8.3 of the Rules.

Subject to the conditions above, the Commission accepts the following proposals with amendments from the Commission:

- the NGF's proposed rules 4.15(b)-(e), clauses 5.7.3(a)-(c), definition for "template for generator compliance programs" under Chapter 10, and clauses 11.19.1-11.19.3;
- the NGF's proposed clause 8.8.1(2b); and
- NEMMCO's additional amendments to the NGF's proposed clauses 8.8.1 and 8.8.3, subject to replacing "compliance program guidelines" with "template for generator compliance programs".

The Commission accepts Grid Australia's proposed changes to rule 4.15.

In relation to NEMMCO's proposal to not italicise "reviewable operating incidents", the Commission considers that this is already defined in clause 4.8.15. Therefore, a new entry for the term "reviewable operating incidents" will be included in the Glossary (Chapter 10) of the Rules. This new entry will refer to clause 4.8.15 for the definition of "reviewable operating incidents".

The Commission accepts NEMMCO's proposed amendment to the NGF's proposed clauses 5.7.3(c) and (d).

A.2 Timeframe for rectification of non-conformance

A.2.1 The NGF proposal

The NGF considers that the existing rule 4.15(i) "does not make [it] clear that a participant has an obligation to rectify non-conformance with a performance standard within a set period of time".⁸⁰ It suggests that in the event that there is a dispute over the time period to rectify non-conformance, "the existing dispute resolution provisions in the Rules may not provide a sufficiently rapid outcome".⁸¹ It considers this as the issue for both recommendations 7 and 8 of the 2006 Review Report.⁸²

To address recommendations 7 and 8, the Proposed Rule:

- "clarifies the wording of rule 4.15(i) and permits the AER to determine an appropriate timeframe for rectification [by participants] of non-conformance in the event of a dispute";⁸³ and
- "allows participants to seek a review from the AER regarding the time allowed by NEMMCO for [participants to rectify] non-conformances".⁸⁴

It suggests this will "produce a faster resolution of disagreements between NEMMCO and the Registered Participant concerning the timeframe for rectification of non-conformance than is the case under the existing Rules".⁸⁵

⁸⁰ The NGF Rule change proposal, p.2.

⁸¹ Ibid., Pp.2-3.

⁸² Ibid.

⁸³ Ibid., p.3.

⁸⁴ Ibid., p.4.

⁸⁵ Ibid., p.3.

A.2.2 Submissions

A.2.2.1 NEMMCO

The NGF's proposed rule 4.15(n) states, "If a Registered Participant who is advised by NEMMCO of a rectification period considers that NEMMCO has not reasonably applied the criteria under rule 4.15(j) in imposing the rectification period, the Registered Participant may, within 20 business days of being advised by NEMMCO, request in writing and with reasons to the AER to review the rectification period."⁸⁶ This proposed new rule relates to Recommendation 7 from the 2006 Review Report.

NEMMCO supports the NGF's proposed rule 4.15(n) because it considers:⁸⁷

- "it would encourage greater administrative accountability and transparency of decisions made by NEMMCO regarding performance standards for Generators";
- "a more robust process for the development and continuous improvement of compliance monitoring programmes is created by including an appeals process for rectification"; and
- "the NGF has used a pragmatic approach to address concerns of Generators in this area".

A.2.3 The Commission's consideration and reasoning

In the 2006 Review Report, the purpose of recommendations 7 and 8 were described as follows:⁸⁸

- Recommendation 7 gives the Registered Participant the right seek a review from the AER of the timeframe for rectifying a performance standard breach (rectification period) imposed by NEMMCO under rule 4.15(i); and
- Recommendation 8 seeks to clarify an existing obligation on the Registered Participant to rectify a performance standard breach within the time specified by NEMMCO.

The NGF proposal is similar to recommendations 7 and 8 in the 2006 Review Report as it relates to clarifying rule 4.15(i) and the AER's role for rectifying the timeframe determination. The NGF's other proposed rules 4.15(j)-(q) also relate to the process of rectifying the breach under recommendations 7 and 8 in the 2006 Review Report. The difference is where the NGF proposes to replace the term "non-compliance" and "breach" with "non-conformance" (and any other like terms). This particular issue is discussed in section A.6 below.

⁸⁶ Ibid., p.13.

⁸⁷ NEMMCO submission, p.3.

⁸⁸ 2006 Review Report, p.83.

A.2.4 The Commission's finding in relation to this issue

With the exception of the NGF's proposal to change the term "non-compliance" and "breach" with "non-conformance" (and any other like terms), the Commission accepts the NGF's proposed rules 4.15(i)-(q).

A.3 Responsibilities of the AER and NEMMCO with respect to enforcement of Rule breaches

A.3.1 The NGF proposal

The NGF states that "Recommendation 9 is concerned with ensuring that the Rules do not confuse the responsibilities of the AER and NEMMCO with respect to enforcement of Rule breaches".⁸⁹

The Proposed Rule addresses Recommendation 9. It "requires NEMMCO to notify the AER of any notification it receives regarding non-conformance with performance standards".⁹⁰

The NGF also suggests this proposal "ensures that NEMMCO does not become a de facto decision maker as to whether certain conduct (or omissions) constitute a breach of the Rules".⁹¹

A.3.2 Submissions

A.3.2.1 NEMMCO

NEMMCO supports the NGF's proposed rule 4.15(f) because it considers this rule "clarifies NEMMCO's reporting obligations" regarding generator non-conformance with performance standards.⁹² However, NEMMCO considers that "any change needs to also clarify NEMMCO's reporting obligations where it reasonably believes that a generator has failed to comply with its performance standard but has not received a notice under clause 4.15(f)".⁹³

A.3.2.2 VENC Corp

VENC Corp notes that Recommendation 9 of the 2006 Review Report and the NGF both propose for NEMMCO to "provide all the relevant information to the AER to

⁸⁹ The NGF Rule change proposal, p.3.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² NEMMCO submission, p.3.

⁹³ Ibid.

effectively assess generator compliance programs”.⁹⁴ However, VENCORP suggests that NEMMCO may not be able to provide all this information.⁹⁵ VENCORP also proposes that the AER be given “the ability to access information from sources other than NEMMCO”.⁹⁶ VENCORP provides an example where the AER may source information from the NSP with respect to localised performance standards.⁹⁷

A.3.3 The Commission's consideration and reasoning

In the 2006 Review Report, the purpose of Recommendation 9 was described. Recommendation 9 includes a requirement on NEMMCO to provide all relevant information to the AER on performance standards compliance under rule 4.15(f).⁹⁸ The Commission also indicated that the AER should have access to all information on non-compliance or potential non-compliances with performance standards by NEMMCO, so that it can monitor and target specific trends.⁹⁹

The NGF’s proposed rule 4.15(f) on NEMMCO’s reporting obligations is consistent with Recommendation 9 of the 2006 Review Report.

NEMMCO’s proposal for an additional clarification of NEMMCO’s reporting obligations, where it reasonably believes that a generator has failed to comply with its performance standards but has not been notified, is consistent with the intention behind Recommendation 9. NEMMCO should report to the AER if it reasonably believes the Registered Participant has breached the performance standard.

The VENCORP submission discussed in section A.3.2.2 relates to its proposal on localised performance standards. This is covered in section A.1.3.2.

A.3.4 The Commission's finding in relation to this issue

With the exception of the NGF’s proposal to change the term “non-compliance” and “breach” with “non-conformance” (and any other like terms),¹⁰⁰ the Commission accepts the NGF’s proposed rule 4.15(f).

The Commission has decided that NEMMCO is required to notify the AER as part of NEMMCO’s reporting obligations where it reasonably believes that a generator has failed to comply with its performance standard but NEMMCO has not been notified.

The Commission notes VENCORP’s proposal on how the AER can access information from sources other than NEMMCO. As this issue relates to the inclusion of the

⁹⁴ VENCORP submission, Pp.1, 3.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ 2006 Review Report, p.83

⁹⁹ Ibid.

¹⁰⁰ This particular issue is discussed in section A.6 of this document.

localised performance standards in the template for generator compliance programs, the Reliability Panel will address this as discussed in section A.1.3.2.

A.4 Changing performance standards

A.4.1 The NGF proposal

The NGF considers “the existing Rules do not contain a provision that readily allows for the correction of performance standards found to be incorrect”.¹⁰¹ It points to rule 4.15 and clause 5.3.8 as not covering what is to be done to change the standard.¹⁰²

The Proposed Rule “allows for the amendment of a performance standard at any time provided that NEMMCO, the relevant participant and the relevant NSP all agree”.¹⁰³ The NGF considers that this “allows registered performance standards to be adjusted where all relevant parties agree that the standard is incorrect”.¹⁰⁴

A.4.2 Submissions

A.4.2.1 NEMMCO

NEMMCO proposes a new change by suggesting that rule 4.13 and any references to it be deleted from the existing Rules.¹⁰⁵ It argues that “clause 4.13 was added to the Rules as a transitional arrangement for Tasmania's entry into the NEM”, and “Tasmania has [now] transitioned into the NEM”.¹⁰⁶

Additionally, NEMMCO is seeking rules 4.14(a)-(m) to be deleted as it considers they no longer apply.¹⁰⁷

NEMMCO proposes a new amendment to make the NGF's proposed rule 4.14 consistent with clause 5.3.9 in relation to the NSP recovering costs for changes made to agreed performance standards.¹⁰⁸

NEMMCO notes that a generator informs the NSP and NEMMCO when the generator proposes to alter the generating system under clauses 5.3.9(b) and S5.2.4.¹⁰⁹ Likewise, NEMMCO proposes that clause S5.2.4 also trigger the generator

¹⁰¹ The NGF Rule change proposal, p.3.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ NEMMCO submission, p.1.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid., p.2.

¹⁰⁹ Ibid., p.3.

to inform the NSP and NEMMCO under the NGF's proposed rule 4.14(p).¹¹⁰ The NGF's proposed rule 4.14(p) applies when NEMMCO, the relevant Registered Participant and NSP agree to amend an error in a performance standard.¹¹¹

A.4.3 The Commission's consideration and reasoning

The Proposed Rule broadly implies that a change to a performance standard is made if all parties agree that a change is required.

The existing rules 4.13 and 4.14(a)-(m) do apply to Tasmania. In light of this, NEMMCO's proposal to delete rules 4.13 and 4.14(a)-(m) allows the proposed new rules under rule 4.14 to apply to all regions of Australia in the NEM, not just for Tasmania.

As a result of NEMMCO's proposed deletion of rules 4.13 and 4.14(a)-(m), the following definitions will be redefined:

- "agreed performance standard" and "deemed performance standard" under clause 4.16.1; and
- "performance standard" under chapter 10.

NEMMCO's proposal for new amendments to the NGF's proposed rule 4.14 on cost recovery aims to mirror the existing clauses 5.3.9(e)-(g). Clause 5.3.9 applies when a generator alters its system whereas the NGF's proposed rule 4.14 could be applied when there is an error found in previously accepted performance standards.

NEMMCO's proposed change to clause S5.2.4 is a minor editorial change. The change captures, in addition to clause 5.3.9(b), the NGF's proposed rule 4.14(p). It also makes it clear that information should be provided under the NGF's proposed rule 4.14(p). The NGF supports this change.¹¹²

A.4.4 The Commission's finding in relation to this issue

The Commission accepts the NGF's proposed changes to rule 4.14 which "allows for the amendment of a performance standard at any time provided that NEMMCO, the relevant participant and the relevant NSP all agree"¹¹³ subject to the following:

- rules 4.13 and 4.14(a)-(m) will be deleted as proposed by NEMMCO;
- the terms "agreed performance standard", "deemed performance standard" and "performance standard" will be redefined; and

¹¹⁰ Ibid.

¹¹¹ The NGF Rule change proposal, p.9.

¹¹² The NGF supplementary presentation, p.6.

¹¹³ The NGF Rule change proposal, p.3.

- the new cost recovery clauses will be included in rule 4.14 as proposed by NEMMCO.

The Commission accepts NEMMCO's proposed changes to clause S5.2.4.

A.5 Exclusive application of rule 4.15(a) to operation of plant specifically covered by performance standards

A.5.1 The NGF proposal

The NGF suggests that generators "feel it should be made clear that rule 4.15(a) relates to the operation of plant that is specifically covered by performance standards rather than applying to the general operation of that plant more generally".¹¹⁴ It suggests that the latter is "dealt with elsewhere in the Rules".¹¹⁵

A.5.2 Submissions

No submissions were received in relation to this particular NGF proposal.

A.5.3 The Commission's consideration and reasoning

The NGF argues that rule 4.15 should only apply to operation of plants covered by performance standards and not for the operation of plants in general. To be specific, the particular rule affected by the NGF's proposal is rule 4.15(a).

Rule 3.8 and clause 4.8.9 of the Rules are examples where the operation of plants in general are considered. Rule 3.8 deals with central dispatch and spot market operation and clause 4.8.9 deals with NEMMCO's power to issue directions.

A.5.4 The Commission's finding in relation to this issue

With the exception of the NGF's proposal to change the term "non-compliance" and "breach" with "non-conformance" (and any other like terms),¹¹⁶ the Commission accepts that rule 4.15 should only apply to operation of plants covered by performance standards and not for operation of plants in general.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ This particular issue is discussed in section A.6 of this document.

A.6 Rename “non-compliance” and “breach” to “non-conformance”

A.6.1 The NGF proposal

The NGF suggests that the existing wording of rule 4.15 with respect to the terms “non-compliance” and “breach” (and any other like terms) implies an automatic breach of the Rules.¹¹⁷ It argues that “a variation by a plant from a performance standard” is not an automatic breach.¹¹⁸ Therefore, the NGF proposes that the following terms be replaced in a number of areas in the Rules: “non-compliance” with “non-conformance”, “breach” with “non-conformance”, “compliance” with “conformance”, “comply” with “conform”, and any other like terms.

A.6.2 Submissions

No submissions were received on this particular NGF proposal.

A.6.3 The Commission's consideration and reasoning

The NGF's proposal to change “non-compliance” and “breach” to “non-conformance” (and any other like terms), on the basis that it will make it clear that “a variation from a performance standard is not automatically a breach of the Rules”,¹¹⁹ will create no substantive change and will not achieve the purpose intended by the NGF.

In particular, whether there is a breach of the Rules will depend on the construction of the relevant clause. For example, if a clause provided “the Registered Participant must ensure that it conforms with a performance standard”, it will still result in a breach of the Rules.

The meaning of “non-conformance” and “non-compliance” are not defined terms (under the Rules) and its meaning should be taken from the dictionary definitions. The dictionary definitions in relation to these terms are not materially different. To achieve the purpose intended by the NGF, it would be necessary to re-construct the relevant provisions so the wording is such that the term “non-conformance” is not taken to be “an obligation to conform” and as such would not be a breach of the performance standard in the event of “non-conformance” (or “non-compliance”). It is not the word that determines whether there has been a breach of the performance standard but the construction of the clause.

In short, changing the terms “non-compliance” and “breach” to “non-conformance” (and any other like terms) would not have the intended effect, if any effect at all.

¹¹⁷ The NGF Rule change proposal, p.3.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

A.6.4 The Commission's finding in relation to this issue

The Commission does not accept the NGF's proposal for replacing "breach" with "non-conformance", "compliance" with "conformance", "comply" with "conform", and any other like terms.

A.7 Involvement of NSPs

A.7.1 The NGF proposal

The involvement of NSPs in the development and approval of the template for generator compliance programs is a new issue from submissions.¹²⁰ In addition to this, NSPs being able to access information on generator performance is also a new issue.¹²¹

Subsequent to submissions on the inclusion of NSPs in the development and approval of the template for generator compliance programs, the NGF indicated its broad support.¹²² However, when it relates to NSPs being given information in addition to NEMMCO in particular, the NGF prefers that NSPs be provided no more than the same information.¹²³

A.7.2 Submissions

A.7.2.1 Grid Australia

Grid Australia is concerned that "TNSPs are not sufficiently informed regarding generator performance" if NSPs are not involved in developing "generator compliance programs".¹²⁴ It notes that NSPs require this information "to discharge their power system security responsibilities".¹²⁵ Therefore, it proposes a number of amendments to rule 4.15 to include NSPs in the process.¹²⁶

A.7.2.2 NEMMCO

As one of the parties affected, NEMMCO proposes that the advice of NSPs be sought and that NSPs be involved in the process for "determining or modifying compliance

¹²⁰ NEMMCO submission, Pp.2-4; VENCORP submission, Pp.1-3; Grid Australia submission, Pp.1-4.

¹²¹ Grid Australia submission, Pp.1-4.

¹²² The NGF supplementary presentation, p.7.

¹²³ Ibid.

¹²⁴ Grid Australia submission, p.1.

¹²⁵ Ibid.

¹²⁶ Ibid.

program guidelines”.¹²⁷ It offers amendments to the NGF’s proposed clause 8.8.1(a)(2b) to implement this.¹²⁸

The NEMMCO submission also proposes that the information being provided by the generator when a performance standard is changed be also included in clause S5.2.4.¹²⁹ The provision of confidential information under the existing clause S5.2.4 includes NSPs. This particular proposal was discussed in section A.4.

A.7.2.3 VENC Corp

VENC Corp proposes that NSPs “be more involved in the development of the performance standards guidelines and the approval of specific requirements for individual compliance programs”.¹³⁰ Its reasons are:¹³¹

- “NSPs are responsible for network system security and the end-to-end delivery of energy”;
- “planning and operational activities undertaken by NSPs should not be compromised by conflicting generator performance standards”; and
- “NSPs are ... key stakeholders in the process”; and
- localised performance standards would be included in the guidelines if NSPs are consulted.

A.7.3 The Commission's consideration and reasoning

There is support from submissions for the inclusion of NSPs in the development of the “guidelines for generator compliance programs”. The NGF’s acceptance of the proposals for the inclusion of NSPs is subject to NSPs being provided the same information as NEMMCO and nothing more.

With the exception of including localised performance standards, VENC Corp’s proposal is consistent with NEMMCO’s and Grid Australia’s. However, the issue of including NSPs in the development of the template for generator compliance programs to allow for localised performance standards were discussed in section A.1.3.2.

¹²⁷ NEMMCO submission, p.4.

¹²⁸ Ibid.

¹²⁹ Ibid., p.3.

¹³⁰ VENC Corp submission, Pp.1-2.

¹³¹ Ibid., p.2.

A.7.4 The Commission's finding in relation to this issue

The Commission accepts the Grid Australia and NEMMCO proposals to insert “NSP” in a number of clauses in the Rules with some minor editorial changes.

The Commission notes VENCORP’s proposal for NSPs to be consulted during the development of the template for generator compliance programs to allow for localised performance standards. As discussed in section A.1.3.2, the Reliability Panel will be required to consult with NSPs when developing the template for generator compliance programs.

B Recommendations from the 2006 Review Report cited in the NGF Rule change proposal

The following recommendations were extracted from the 2006 Review Report.¹³² These are the recommendations being proposed to be implemented in the NGF Rule change proposal.

4. That the MCE propose a Rule change to establish a requirement that the AER issue guidelines setting out specific requirements for Generator, Market Customer, MNSP and NSP compliance programs. These guidelines should be subject to the principles contained in the Rules and should be developed subject to the Rules consultation procedures.

5. That the MCE propose a Rule change to replace the current framework for determining generator and NSP compliance programs with the following:

- requiring Generators, Market Customers, MNSPs and NSPs to develop and submit a compliance program to the AER, that is consistent with the compliance program principles in the Rules and AER compliance program guidelines;
- giving the AER specific power to accept or reject a compliance program based on clear requirements for adequate information, the requirements of the Rules and the compliance guidelines;
- giving the AER the ability to seek the technical advice of NEMMCO in relation to its decision to accept or reject a compliance program; and
- requiring the AER to notify the Generator, Market Customer, MNSP or NSP of its decision in writing and give reasons.

7. That the MCE propose a Rule change that allows the AER to determine a timeframe for rectification if a Registered Participant disagrees with NEMMCO's determination of a rectification timeframe under clause 4.15(i).

8. That the MCE propose a Rule change that clarifies the wording in clause 4.15(i) to make clear that the Registered Participant has an obligation to rectify a performance standard breach within the time specified by NEMMCO so that a failure to rectify will be considered a breach of the Rules by the Registered Participant.

9. That the MCE propose a Rule change requires NEMMCO to provide all relevant information as received under clause 4.15(f) on performance standard breaches or potential breaches to the AER.

¹³² 2006 Review Report, Pp.9-10.

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