



Australian Energy Market Commission

Rule Determination

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

Rule Proponent
National Generators Forum (NGF)

23 October 2008

Signed: 

John Tamblyn
Chairman
For and on behalf of
Australian Energy Market Commission

Commissioners
Tamblyn
Ryan
Woodward

Inquiries

The Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

E: aemc@aemc.gov.au

T: (02) 8296 7800

F: (02) 8296 7899

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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
SCO	Standing Committee of Officials
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").

In accordance with sections 102 and 103 of the National Electricity Law (NEL) the Australian Energy Market Commission (Commission) has decided to make the National Electricity Amendment (Performance Standard Compliance of Generators) Rule 2008 and associated Rule determination. This Rule determination sets out the reasons for the Commission's decision. The Rule commences operation on 23 October 2008.

The key elements of the Rule determination are:

- the Reliability Panel will develop, including reviewing and amending, the template for generator compliance programs based on a public consultation process and review this template within a defined time period in accordance with clause 8.8.3 of the Rules every three years or as the Commission directs;
- Registered Participants will institute and maintain generator compliance programs;
- the AER will regularly conduct spot audits of selected generators' compliance programs as part of its compliance monitoring activities;
- Generators will engage with external auditors to independently audit their compliance programs to determine whether they are required to amend their compliance programs and amend if required;
- 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;
- 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;
- registered performance standards will be adjusted where all relevant parties (i.e. NEMMCO, the relevant participant and the relevant NSP) agree;
- rule 4.15 is exclusively related to the operation of registered performance standards (and not the operation of that plant in general);
- the terms "non-compliance" and "breach" (and any other like terms) under rule 4.15 are retained;

- as part of the public consultation process under clause 8.8.3, NSPs will be involved in the development of the template for generator compliance programs; and
- NSPs will be able to access information on generator performance.

The Commission has undertaken an extensive consultation process in considering the proposed Rule. This process included:

- publishing the Rule change proposal on 6 March 2008 in accordance with section 95 of the National Electricity Law (NEL). Submissions closed on 4 April 2008, and the Commission received three submissions at this first stage of consultation;
- publishing the draft Rule determination and draft Rule on 26 June 2008 in accordance with section 99 of the NEL. Submissions closed on 8 August 2008, and the Commission received five submissions at this second stage of consultation; and
- publishing an explanatory note requesting submissions on a specific issue after the second stage of consultation on 18 September 2008. Submissions closed on 3 October 2008, and the Commission received three submissions from that consultation.

Having considered the issues raised in the Rule change proposal, submissions, and its own analysis, the Commission is satisfied that the Rule to be made will achieve the national electricity objective (NEO) and satisfies the requirements under the NEL. The Commission considers the Rule to be made will satisfy the NEO as it will promote efficient operation and use of electricity services and reliability, safety and security of the NEM 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) only 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
- by providing NSPs with information relating to the performance of generators.

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 The NGF suggests that the AER “considered that it was inappropriate for them to both approve and then audit compliance with [sic] 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 the “dispute resolution mechanism will produce faster resolution of disagreements between NEMMCO and the Registered Participant concerning the

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.

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 this "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 only "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 (MCE) 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

In its Rule change proposal, the NGF also noted recommendation 1 in the 2006 Review Report.²⁷ This recommendation was covered in National Electricity

²⁰ Ibid.

²¹ Ibid.

²² Ibid., Pp.3, 9-14.

²³ 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.

Amendment (Resolution of existing generator performance standards) Rule 2006 No.21. That Rule “establish[ed] a process for resolving and registering the content of performance standards for generators that were connected, or were in the process of connecting, at the date the current performance standards regime came into effect in their region” and “for the relevant content to be finalised through agreement or by expert determination by 1 June 2007” under rules 4.16 and 4.17.²⁸

Prior to that Rule, the Commission noted in the 2006 Review Report how clauses 4.13 and 4.14 of the Code were applied for existing plant:²⁹

- “Under clause 4.13 of the (then) Code, Generators, Customers and MNSPs were required to submit proposed performance standards to NEMMCO by 16 December 2003”;
- “Clause 4.14 of the Code defined the criteria that NEMMCO was required to use to evaluate a proposed set of performance standards” where a performance standard is determined:
 - in accordance with a derogation;
 - in accordance with a connection agreement;
 - in accordance with the design performance of the plant; or
 - in accordance with schedules 5.1, 5.2, 5.3 and 5.3a”; and
- “Where a standard was unable to be agreed by 16 November 2004, the performance standard was deemed to be:
 - (1) the technical characteristics set out in the relevant connection agreement;
 - (2) if a derogation is in place, the connection agreement subject to the technical characteristics set out in the relevant derogation in force on 16 November 2003; or
 - (3) the connection requirements of the connection point determined in accordance with clause 5.3.3 in force on 15 November 2003.”

With respect to the process for setting performance standards for new Generator connections, the Commission considered in the 2006 Review Report that this issue interacted closely to NEMMCO’s 2006 Rule change proposal on NEMMCO relating to technical standards for wind generation. That Rule change proposal resulted in

²⁷ Ibid., p.2.

²⁸ AEMC 2006, *National Electricity Amendment (Resolution of existing generator performance standards) Rule 2006 No. 21*, Rule Determination (7 December 2006, Sydney), p.7.

²⁹ 2006 Review Report, p.31.

the National Electricity Amendment (Technical Standards for Wind Generation and other Generator Connections) Rule 2007 No.2.³⁰

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 offered 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.³¹ The Commission received submissions from:

- NEMMCO;
- Grid Australia;³² 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 Appendix A of this final Rule 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.

³⁰ Ibid., p.36.

³¹ These submissions can be found at <http://www.aemc.gov.au/electricity.php?r=20080228.150735>.

³² 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.

On 12 June 2008, the Commission published a notice under section 107 of the NEL to extend the publication of the draft Rule determination and draft Rule for the NGF Rule change proposal until 26 June 2008. The Commission considered it necessary to extend the publication of the draft Rule determination in order to seek legal advice on a number of issues that were raised in stakeholder submissions.

On 26 June 2008, the Commission gave notice under section 99 of the NEL of the making of the draft Rule determination and draft Rule on the NGF's Rule change proposal. Submissions closed on 8 August 2008. Requests for a pre-determination hearing closed on 3 July 2008.

The Commission received five submissions on the draft Rule determination and draft Rule in the second round of submissions, which are available on the AEMC website.³³ The Commission received submissions from:

- Grid Australia;³⁴
- National Generators Forum;
- Pacific Hydro;
- Reliability Panel; and
- Roaring 40s.

The second round of submissions sought to further clarify and amend the NGF Rule change proposal and the first round of submissions. These are discussed further in Appendix A of this Rule determination.

On 18 September 2008, the Commission published a notice under section 107 of the NEL to extend the period for making its final Rule determination and final Rule for the NGF Rule change proposal to 23 October 2008. The Commission considered that a specific issue raised by the request for the Rule change was of sufficient complexity to warrant this extension in the time period. The specific issue was whether it would be appropriate for the final Rule to incorporate a role and process for the AER to be responsible for accepting or rejecting generators' compliance programs on performance standards (based on the Reliability Panel template for generator compliance programs). This role was proposed in the Commission's draft Rule determination on this Rule change proposal. The proposed role and process could be incorporated by means of an amendment to rule 4.15 as it was set out in the Draft National Electricity Amendment (Performance Standards Compliance of Generators) Rule 2008 published by the Commission on 26 June 2008. Submissions on this specific issue closed on 3 October 2008.

The Commission received three submissions³⁵ on this specific issue from:

³³ These submissions can be found at <http://www.aemc.gov.au/electricity.php?r=20080228.150735>.

³⁴ 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.

- AER;
- AGL; and
- National Generators Forum.

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 there are no relevant MCE statements of policy principles for this proposal.

No public hearing has been held on this Rule change proposal.

³⁵ These submissions can be found at <http://www.aemc.gov.au/electricity.php?r=20080228.150735>.

2 Methodology for developing the final Rule determination

The Commission has determined in accordance with section 102 of the NEL to make, with amendments, this final Rule determination and in accordance with section 103, the Rule to be made (the final Rule). The final Rule, which is different to the Proposed Rule put forward by the proponent is attached to this determination. The final Rule commences operation on 23 October 2008.

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

1. the Commission's powers under the NEL to make the final 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 final 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 final Rule

The Commission is satisfied that the final 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 final 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 final 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 final 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]”;³⁶
- “influence participants to make efficient investments regarding compliance with performance standards and regarding the implementation of monitoring programs to ensure such compliance”;³⁷
- “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”;³⁸ and
- implement recommendations from the 2006 Review Report where the “2006 AEMC Review expressly states that its recommendations are consistent with the NEM Objective”.³⁹

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:⁴⁰

- “Greater 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)”;
- “Greater 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)”;
- “More 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:⁴¹

- “Small 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)”;

³⁶ The NGF Rule change proposal, 14 February 2008, p.4.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid., p.5.

⁴¹ 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”.⁴² In particular:⁴³

- “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

The Commission has applied the Rule making test to the final Rule, as modified by the outcomes of analysis and discussion in Appendix A of this final Rule determination. The Commission is satisfied that the final Rule is likely to satisfy the NEO as it will promote efficient operation and use of electricity services and reliability, safety and security of the NEM 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;

⁴² Ibid.

⁴³ Ibid., Pp.5-6.

- allowing for a process to correct performance standards which are found to be incorrect;
- clarifying that rule 4.15(a) only 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
- providing NSPs with information relating to the performance of generators.

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

In its draft Rule determination, the Commission adopted some of the NGF’s proposed Rule changes in part and proposed other Rule changes to address stakeholder issues. These included 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 specified that:

- the Reliability Panel will develop 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;
- Registered Participants will institute and maintain generator 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.

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

2.4 Differences between Draft Rule and Rule to be made

The final Rule maintains the changes specified in the draft Rule, subject to the following amendments:

- new transitional clauses provide for the implementation of the template, subsequent changes to that template, and changes following the review of the template will allow the Reliability Panel the discretion to determine during its consultation with stakeholders whether the implementation dates to respond to the template should be extended for Registered Participants;
- Registered Participants who are currently not complying with the existing compliance program requirements will be covered under the transitional clause (in addition to Registered Participants currently complying);
- Generators will only be required to submit to NEMMCO updated information rather than all the information to support changes to performance standards;
- Registered Participants' compliance information under clause 4.15(d) to be delivered to the AER should be requested by the AER and not the NSP; and
- the Commission will initiate the review process for the Reliability Panel to develop, including reviewing and amending, the template in accordance with the public consultation process under clause 8.8.3.

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 the draft Rule determination and this final Rule 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”;⁴⁴
2. “allows participants to seek review from the AER regarding the time allowed by NEMMCO for non-conformances to be rectified”;⁴⁵
3. “clarifies that NEMMCO must advise the AER of any non-conformance with performance standards”;⁴⁶
4. “allows registered performance standards to be adjusted where all relevant parties agree”;⁴⁷
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”;⁴⁸
6. renames “non-compliance” and “breach” to “non-conformance” (and any other like terms) under Rule 4.15;⁴⁹ and
7. involves NSPs in the development of the template for generator compliance programs,⁵⁰ and being able to access information on generator performance.⁵¹

In developing the draft Rule determination, the Commission examined a number of issues, including:

⁴⁴ The NGF Rule change proposal, 14 February 2008, p.2.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Grid Australia submission, 4 April 2008, Pp.1-4; NEMMCO submission, 4 April 2008, p.4; VENCORP submission, 18 April 2008, Pp.1-2.

⁵¹ Grid Australia submission, 4 April 2008, Pp.1-4.

- 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;
- 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.

For this final Rule determination, the Commission considered eight matters raised in the second round of submissions relating to areas covered under the draft Rule determination. These matters include:

- whether localised performance standards should be included when developing the template for generator compliance programs;
- whether a cost/benefit assessment should be undertaken when developing the template for generator compliance programs;
- whether the timeframe for Registered Participants to respond to changes to the template for generator compliance programs should be amended in the draft Rule;
- whether a NEM dispute mechanism relating to the design or modification of the template should be included in the Rules;
- whether the connection agreement requirements between the Generator, NSP and NEMMCO under clause 5.7.3(a) of the draft Rule should be included in the template for generator compliance programs;
- whether the Reliability Panel’s development of the template for generator compliance programs should be based on clause 8.8.3 and as the Commission directs;
- whether the AER should be responsible for accepting or rejecting generator compliance programs;

- whether access to the Registered Participant’s information for compliance purposes should be limited only to the AER; and
- whether Generators should only be required to submit to NEMMCO with updated information rather than resubmitting all of the information when the performance standards are amended by agreement between NEMMCO, the Generator and the NSP.

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

A.1 Framework for compliance programs

A.1.1 The NGF proposal

The NGF suggested that “the framework for compliance programs in the existing Rules may not be effective in establishing and maintaining compliance with performance standards”.⁵² It considered this as a common issue under recommendations 4 and 5 from the 2006 Review Report.

To implement recommendations 4 and 5, the NGF proposed a variation to these recommendations from the 2006 Review Report:⁵³

- “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 plans using the template.”

⁵² The NGF Rule change proposal, p.2.

⁵³ Ibid.

A.1.2 First round submissions

A.1.2.1 Grid Australia

Grid Australia proposed a minor editorial change to the NGF proposed clause 5.7.3 so it refers to the NGF proposed rule 4.15.⁵⁴ It pointed out that rule 4.15 “already sets out the relevant time periods for new and existing plant”.⁵⁵ It proposed referring in clause 5.7.3 to rule 4.15 instead of specifying the period to be “within 6 months”.⁵⁶

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:⁵⁷

- “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 proposed 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”.⁵⁸ An additional proposal from NEMMCO was for the Reliability Panel to review the “compliance program guidelines” in accordance with clause 8.8.3 “at least every calendar year”.⁵⁹

It also noted 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”.⁶⁰ NEMMCO suggested “[d]epending on the intention of the phrase, it may be simpler not to italicise [the term]”.⁶¹

NEMMCO suggested that a “possible ... situation could occur where a connection agreement states that under certain conditions the plant has an operating restriction for non-scheduled plant that is not reflected in the performance standards”.⁶² Therefore, it proposed amendments “to capture both the technical requirements of

⁵⁴ Grid Australia submission, 4 April 2008, p.2.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ NEMMCO submission, 4 April 2008, p 2.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid., p.3.

clause S5.2.5 and the relevant connection agreement” in these situations in the NGF’s proposed clause 5.7.3.⁶³

NEMMCO supported the NGF’s proposed clause 8.8.1(a)(2b) because it considered that “it would ensure the Reliability Panel, in determining or modifying compliance program guidelines, takes into consideration ... the parties affected”.⁶⁴ It also proposed that advice should be sought from NSPs in the process since NSPs are involved.⁶⁵ This issue regarding NSPs is discussed in section A.7.

A.1.2.3 VENCorp

VENCorp indicated its support for “the NGF’s suggestion that the Reliability Panel and not the AER be responsible for issuing the guidelines [for generator compliance programs]”.⁶⁶ It considered that “this will avoid any conflicts arising from the AER in both approving and auditing compliance programs”.⁶⁷

VENCorp sought flexible guidelines which it considered will allow for the inclusion of “localised performance standards”.⁶⁸ It raised the following issues if localised performance standards were omitted from the guidelines:⁶⁹

- “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 provided an example of a localised performance standard, which is “a control scheme which prevents overloading of non-scheduled assets”.⁷⁰

VENCorp recommended that “the Reliability Panel should consult with the relevant NSP”.⁷¹ It considered that this will “ensure that all essential localised performance standards are incorporated during the development of the guidelines”.⁷²

Subsequent to the VENCorp submission, the NGF indicated that it disagreed with VENCorp’s proposal for the inclusion of localised performance standards.⁷³

⁶³ Ibid.

⁶⁴ Ibid., p.4.

⁶⁵ Ibid.

⁶⁶ VENCorp submission, 18 April 2008, p.2.

⁶⁷ Ibid.

⁶⁸ Ibid., p.1.

⁶⁹ Ibid., p.2.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ The NGF supplementary presentation, 1 May 2008, p.6.

A.1.3 The Commission's consideration and reasoning in the draft Rule determination

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:⁷⁴

- 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 supported the establishment of a compliance program for performance standards for Generators, the NGF's solution differed from the recommendations of the 2006 Review Report. In particular, the NGF proposes a compliance program:⁷⁵

- 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 supported this proposed new role for the Reliability Panel.⁷⁶

The draft Rule determination indicated that:

- it was questionable whether "transmission service standards" are part of the Panel's responsibilities as it was not listed under the functions of the Reliability Panel in clause 8.8.1(a) of the Rules and this was the reason why the NGF proposed to insert a new clause under clause 8.8.1 to clarify this and NEMMCO proposed further amendments to clause 8.8.3;
- the template for generator compliance programs and transmission service standards were not related and that the template related to compliance programs for generators;
- if the template were compliance-related then it should fall under the functions and powers of the AER;

⁷⁴ 2006 Review Report, p.83.

⁷⁵ The NGF Rule change proposal, Pp.2-3.

⁷⁶ VENCORP submission, 18 April 2008, p.2; NEMMCO submission, 4 April 2008, Pp.2, 4.

- the 2006 Review Report stated that while the guidelines may contain technical content, the guidelines were essentially concerned with compliance which would make the AER the more appropriate body to oversee its development.⁷⁷ The key objectives identified in the 2006 Review Report were to ensure effective enforcement by:⁷⁸
 - 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; and
- section 15(1)(eb) of the NEL provided the AER with the power “to approve compliance programs of service providers relating to compliance by service providers with this Law or the Rules” and that this provision of the NEL supported the 2006 Review Report that the AER should be responsible for the template for generator compliance programs, which were incidental to the compliance programs.

The 2006 Review Report also stated that the guidelines should be developed subject to the Rules consultation procedures to provide greater clarity and certainty concerning compliance for all parties.⁷⁹ The Commission determined that a limitation of the Rules consultation procedures is the set timeframe in which a review is to be undertaken. Clause 8.8.3 was considered as 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 program guidelines” on an annual basis⁸⁰ was considered to be difficult to achieve in practice. Instead, the Commission determined that 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 5.7.3,⁸¹ it was considered that referring to the NGF’s proposed rule 4.15 would clarify the relationship between rule 4.15 and clause 5.7.3. The NGF suggested that the original Code change intended to remove clause 5.7.3 once rule 4.15 was in place.⁸²

⁷⁷ 2006 Review Report, p.46.

⁷⁸ Ibid., p.45.

⁷⁹ Ibid., p.46.

⁸⁰ NEMMCO submission, 4 April 2008, p.2.

⁸¹ Grid Australia submission, 4 April 2008, p.2.

⁸² The NGF Rule change proposal, p.13.

NEMMCO's proposed changes to clauses 5.7.3(c) and (d) was a new proposal aimed to address the scenario for the plant having an operating restriction which is not reflected in the performance standards. This was a minor editorial change. Although the NGF preferred that clause 5.7.3 should be removed once rule 4.15 was in place,⁸³ NEMMCO's proposal broadened the application of clause 5.7.3. This meant that clause 5.7.3 focuses on the connection agreement in addition to the performance standard. Rule 4.15 and clause 5.7.3 were therefore considered to be distinguishable and meant that clause 5.7.3 was still relevant and should be retained.

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

The Commission noted 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 in the draft Rule determination

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

The Commission accepted 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.

⁸³ The NGF supplementary presentation, 1 May 2008, p.6.

Subject to the conditions above, the Commission accepted 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 accepted Grid Australia's proposed changes to rule 4.15.

In relation to NEMMCO's proposal to not italicise "reviewable operating incidents", the Commission considered that this was 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 accepted NEMMCO's proposed amendment to the NGF's proposed clauses 5.7.3(c) and (d).

A.1.5 Second round submissions

A.1.5.1 Pacific Hydro

Pacific Hydro states that:⁸⁴

- the development of the template for generator compliance programs should entail a "rigorous consultation process ... to ensure adequate consideration of specific generator plant technologies and local connection issues"; and
- this development of the template should follow "a light handed approach [as opposed] to unreasonable modifications of existing generator compliance arrangements".

It also proposes that changes to the template should be "assessed on a cost/benefit basis".⁸⁵

With respect to the time provided for Registered Participants to respond to changes to the template for generator compliance programs, Pacific Hydro considers that:⁸⁶

⁸⁴ Pacific Hydro submission, 8 August 2008, p.1.

⁸⁵ Ibid., p.2.

⁸⁶ Ibid., Pp.1-2.

- the proposed initial three month and subsequent six month timeframe periods for changes to the template that Registered Participants will be required to respond “may prove unreasonable” if there are material changes;
- the response time to the initial template or effective date of subsequent changes be extended to 12 months;
- a future review of the template “could impact generators routine testing arrangements period”; and
- the review period be extended or the effective date of subsequent changes be extended from six months to 12 months.

In terms of a dispute process for the template, Pacific Hydro indicates that:⁸⁷

- it is unclear on whether the Reliability Panel would be included in the dispute process under the Rules; and
- there is no NEM dispute mechanism for the template design or modification.

A.1.5.2 Grid Australia

Grid Australia indicates its support for VENCORP’s first round submission to include localised performance standards in the template.⁸⁸

It proposes that the draft clause 5.7.3(a) requirements be incorporated in the template for generator compliance programs. This means that the template would include the following: ⁸⁹

- compliance with the applicable technical requirements of clause S5.2.5;
- compliance with the relevant connection agreement including the performance standards; and
- guidance on the level of evidence that a Generator must provide to the NSP in relation to its connection agreement with the generator and to NEMMCO.

A.1.5.3 Reliability Panel

The Reliability Panel foreshadows that it will take approximately nine months to develop the initial template for generator compliance programs once the amended Rule commences.⁹⁰

⁸⁷ Ibid., p.2.

⁸⁸ Grid Australia submission, 8 August 2008, p.1.

⁸⁹ Ibid., p.1.

⁹⁰ Reliability Panel submission, 15 August 2008, p.1.

A.1.5.4 Roaring 40s

Roaring 40s states that:

- it has “concerns about the proposed role of guidelines for generator performance standard compliance plans [i.e. template for generator compliance programs]”;⁹¹
- it considers that this is “prescriptive regulation” and that there is an “assumption that the Reliability Panel ... is able to achieve a superior approach” but instead “will come to different conclusions”;⁹²
- the AER’s ability to take enforcement action against a party that has breached performance standards will be weakened if the template is used as the basis for the party’s compliance program;⁹³ and
- the Reliability Panel “defining industry best practice rather than leaving this task to industry” is a risk which is “a sub optimal approach” and would be a “detriment of both effectiveness and efficiency”.⁹⁴

It further proposes that provisions be included:⁹⁵

- “to ensure NEMMCO examines and reports at length on the effectiveness of generated compliance plans and generator performance standard compliance in power system incident reports”; and
- “to promote industry best practice through reporting on generator performance standard breaches including detailed root cause analysis.”

A.1.6 Supplementary submissions

A.1.6.1 AER

The AER indicated “very strong concerns with the proposition that the AER should approve or reject generators’ compliance programs”.⁹⁶ It provided the following arguments against the Commission’s draft Rule determination which had proposed such a role for the AER:⁹⁷

- it “would result in significant additional costs to the sector for limited benefit”;
- it “would compromise the AER’s enforcement role”;

⁹¹ Roaring 40s submission, 14 August 2008, p.1.

⁹² Ibid., Pp.1-2.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ AER submission, 1 October 2008, p.1.

⁹⁷ Ibid., Pp.1-3.

- it would “result in a net detriment to the NEM” given the limited benefits and potential costs;
- “As part of its compliance monitoring activities, the AER conducts spot audits of selected generators’ compliance programs” which “creates incentives for generators to have robust compliance programs in place”;
- it “will achieve the opposite effect” to effective enforcement;
- it will mix with the AER’s responsibility “for monitoring whether a breach has occurred and taking enforcement action in the event of a breach” which would “consequently diminish generators’ accountability in relation to technical standards”;
- generators may develop “misplaced expectations that certain conduct will be protected from enforcement action” in that “the AER will need to attach caveats to its approval of compliance programs” which would “diminish the value of the approval”;
- “The AER may be perceived as having a conflict of interest or ... lack of objectivity if it is required to enforce a breach of the Rules in relation to compliance with performance standards where it has approved the generators’ compliance programs in advance”;
- “the AER is likely to take a conservative view when approving compliance programs” resulting in a “likely ... increased cost to industry and stifling of innovation in compliance strategies”;
- the AER would need to consider more than 120 different generators and “the approval process would require specialist engineering knowledge that does not sit well with the AER’s existing skills set”; and
- the NGF’s Rule change proposal which does not propose that the AER will be responsible for accepting or rejecting compliance programs has broad industry support, including the NGF, the AER, NEMMCO, the MCE, and the NGF’s process was endorsed by the SA Minister for Energy’s Second Reading speech on the amendments to the NEL.

The AER has outlined the NGF’s proposed framework for managing compliance:⁹⁸

- “the Reliability Panel develops a template for generator compliance programs”;
- “Generators must develop and maintain compliance programs in line with the template”;
- “the template is regularly reviewed by the reliability Panel in order to provide a continual improvement focus”;
- “The generator then has a six month window to implement any changes to its compliance programs to reflect the new template”;
- “the AER conducts spot audits of selected generators’ compliance programs”;

⁹⁸ Ibid., Pp.1-2.

- “the AER must determine whether enforcement action is warranted and, if an action is warranted, the nature of the enforcement action” if a generator’s compliance is questioned after an incident occurs; and
- “the AER would consider (among other things) the generator’s compliance program, including whether the compliance program is consistent with the template”.

The AER considers that the “NGF’s proposal is consistent with recent amendments to the National Electricity Law (NEL)” and that the “generator’s compliance programs would take the form of a compliance program required under the Rules, as envisaged by section 64(e) of the NEL”.⁹⁹

A.1.6.2 AGL and the NGF

AGL and the NGF have submitted separate submissions, but share similar concerns on the proposed role for the AER in approving compliance programs.¹⁰⁰ They consider that this would:

- “Destroy the quality assurance approach established by the NGF proposal and substitute a static, bureaucratic approval process”;¹⁰¹
- “Require the AER to both approve and assess compliance with compliance plans”;¹⁰²
- “Give the AER an alarming power to second-guess generators and impose compliance plans on plants”;¹⁰³
- “require the AER to become experts in the technical operation of the power system” which “is both inefficient and unnecessary”;¹⁰⁴ and
- “potentially places the AER in the position of reviewing its own compliance plans, compromising its independent enforcement role”.¹⁰⁵

In terms of the AER’s role in compliance, AGL and the NGF states that the AER would not be required to approve compliance programs because:¹⁰⁶

- the Rule change strengthens the AER’s auditing process of power stations by relevant parties agreeing on “good electricity practice” which is encapsulated in the Panel’s template for generator compliance programs; and
- “The AER is able to verify before or after a system event whether a generator is compliant during its audit process”.

⁹⁹ Ibid., p.2.

¹⁰⁰ AGL submission, 10 October 2008.

¹⁰¹ AGL submission, 10 October 2008, p.1; NGF submission, 14 October 2008, p.1.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ AGL submission, 10 October 2008, p.1; NGF submission, 14 October 2008, p.3.

¹⁰⁵ NGF submission, 14 October 2008, p.3.

¹⁰⁶ AGL submission, 10 October 2008, p.2; NGF submission, 14 October 2008, p.3.

AGL and the NGF consider that the NGF's Rule change proposal, which does not include the proposal for the AER to approve compliance programs:¹⁰⁷

- was extensively consulted on including some drafting from the Standing Committee of Officials (SCO);
- “Maintains the focus on good electricity industry practice by both:
 - allowing it to be defined in advance; and
 - requiring it to be modified in light of experience
- sets up a quality assurance approach that keeps compliance plans up to date with a clear template, obligations on generators to comply and the ability for the AER to assess compliance in advance of issues; and
- separates the AER role of assessing compliance from the technical role of defining good electricity industry practice and developing the plans, while still ensuring oversight.”

A.1.7 The Commission's consideration and reasoning in this final Rule determination

A.1.7.1 Localised performance standards

The Commission considers that the localised performance standards should not be specified in the Rules as part of the template for generator compliance programs as this would complicate the process in attempting to address all the specific issues of localised performance standards. The Commission considers that clause 8.8.3 requires the Reliability Panel to consult with the public, including NSPs, NEMMCO and Generators, when it develops the template for generator compliance programs.

A.1.7.2 Cost/benefit assessment

In relation to Pacific Hydro's proposal that a cost/benefit assessment should be undertaken when the Panel develops the template for generator compliance programs, the Commission considers that the Reliability Panel will take into account the NEO in order to address power system security and reliability when the Reliability Panel develops the template.

A.1.7.3 Time for Registered Participants to respond to the changes to the template

Pacific Hydro's submission relates to the time for Registered Participants to respond to the initial template, subsequent changes to the template and review of the template. Draft rule 11.19 specifies the transitional arrangement for Registered Participants to respond to the commencement of the initial template for generator

¹⁰⁷ AGL submission, 10 October 2008, p.1; NGF submission, 14 October 2008, Pp.1-2.

compliance programs. Draft rule 4.15(c)(3) provides for a six month transitional period for Registered Participants to respond to subsequent changes to the template.

Given that the process to develop, including amending or reviewing, the template will be based on clause 8.8.3, the review period is limited by this clause and extending the review period would be an unsuitable option should the time be extended for Registered Participants to implement their compliance programs. Another option would be to extend the implementation dates for Registered Participants to respond to: the initial template, the subsequent changes to that template, and the changes following the review of the template.

If the Reliability Panel's proposal were followed that it would take about nine months to develop the initial template and another three months for generators to respond to this, the Commission considers that it will take about 12 months for the implementation of the generator compliance programs.

If Pacific Hydro's proposal were followed, the Commission considers that extending the time to 12 months for Registered Participants to respond would mean that it would take almost two years before compliance programs can be implemented from the instant that the Reliability Panel begins to develop the template.

Specifying a particular time of three months for the initial template and six months for subsequent changes to the template gives Registered Participants certainty as to the time required to respond. On the other hand, a time that is too restrictive or interferes with a participant's internal processes could be considered inefficient. The Commission considers that Registered Participants should be given enough time to respond to the template, but at the same time, not delay the process in achieving reliability, safety and security of the NEM by the implementation of the template. This is achieved by allowing the Reliability Panel the discretion to decide on whether the time should be extended.

Another issue to consider is that the transitional arrangements in draft rule 11.19 assumes that Registered Participants are currently complying with the existing compliance program requirements. Registered Participants that are not complying with the compliance programs are not covered in the transitional arrangements and would not be covered for a period of at least 12 months. These Registered Participants should be required to comply with the Old Clause 5.7.3(b) as are those that are currently complying. A problem that may arise with this approach is the time for them to transition from the Old Clause 5.7.3(b). The Commission anticipates that the Reliability Panel will take this into account when it determines the implementation date. For consistency, the Commission considers that the transition clauses should also apply to Registered Participants who are currently not complying with the existing Rules.

A.1.7.4 NEM dispute mechanism over the template for generator compliance programs

In the draft Rule determination, the Commission emphasised that the role of the Reliability Panel will be to develop the template for generator compliance programs based on a rigorous public consultation process in accordance with clause 8.8.3.

However, a dispute resolution process relating to the development of the template was not provided in the draft Rule.

The Commission envisages that a rigorous public consultation process with stakeholders in accordance with clause 8.8.3 would seek to address any issues that would result in a dispute. The Commission considers that it would also be inefficient to undertake a separate dispute process if a particular stakeholder is not satisfied with the template as it would likely duplicate the consultation process and undermine the intention of clause 8.8.3.

A.1.7.5 Inclusion of clause 5.7.3(a) requirements in the template for generator compliance programs

Clause 5.7.3(a) of the draft Rule requires that each Generator must provide evidence to the relevant NSP and to NEMMCO that its generating system complies with the relevant technical requirements (covered in the existing clause S5.2.5) and the connection agreement which includes the performance standards.

Grid Australia's proposed inclusion of connection agreements in the template for generator compliance programs in draft clause 5.7.3(a) is similar to the inclusion of localised performance standards in the template. In its first round submission, VENCORP had proposed for the inclusion of localised performance standards in the development of performance standards. The Commission had noted the VENCORP proposal and stated that clause 8.8.1(a)(2a), as proposed by the NGF and amended by NEMMCO, requires the Reliability Panel to consult with NSPs, in addition to NEMMCO and Generators, which would also involve public consultation under clause 8.8.3 when it develops the template for generator compliance programs.

Similarly, the Commission notes Grid Australia's proposal and considers that the Reliability Panel will consult with NSPs, in addition to NEMMCO and Generators, when it develops the template for generator compliance programs in accordance with the public consultation process under clause 8.8.3.

A.1.7.6 Clarifying the role of the Reliability Panel with respect to the template for generator compliance programs including the development of the template

The Commission notes Roaring 40s' concerns about the risk in developing the template for compliance program guidelines. The Commission also notes that the Reliability Panel is not a regulator, with its constitution consisting of representatives in the industry. Nevertheless, any risks in the development of the template will be mitigated by the Reliability Panel undertaking public consultation on the template's development with relevant stakeholders in accordance with clause 8.8.3 of the Rules.

The Commission also further considered the process for developing, including reviewing and amending, the template for generator compliance programs which is related to the template's development. There were three aspects that were considered under this issue:

1. Which review process should be used for developing the template? The draft Rule requires the Panel to use the consultation process in clause 8.8.3. The alternative is for the Panel to have a limited consultation with just NEMMCO, NSPs and Generators. The former process is broader while the latter may be faster where necessary. The Commission has decided that the process in clause 8.8.3 is more rigorous and gives the Panel more comfort that all related issues are addressed, noting that the initial template is developed using the process in clause 8.8.3.
2. Who should initiate the review process for developing the template? Under the draft Rule, the review would be initiated by Terms of Reference from the AEMC. The alternative could be to give the Panel the power to initiate the review without reference to the Commission. The Commission considers that it should have this power so that it can manage the Panel's priorities and work program.
3. Should the Rules contain principles for the Commission to follow when initiating a review? Such principles could include relevant significant power system incidents, or relevant Rule change (e.g. Schedule 5 of the Rules). The alternative could be to leave this open so that reviews are performed on a case by case basis. The Commission has determined that adding another layer of principles is unnecessary and potentially restrictive in the circumstances.

A.1.7.7 The proposed role of the AER in approving compliance programs

The 2006 review recommended that the AER be responsible for accepting or rejecting compliance programs on the grounds that this would achieve effective enforcement. The AER and AGL have provided an alternative approach in their submissions that would equally achieve the Commission's objective, but at a lower cost to the AER and potentially the industry. This would be achieved by the AER conducting spot audits of selected compliance programs on a regular basis which will create incentives for generators to ensure that they have robust compliance programs in place without the AER being required to examine more than 120 different generators and resourcing the specialist engineering knowledge to examine all these compliance programs. Generators could proactively ensure that they have robust compliance programs in place by engaging external auditors to independently audit their compliance programs. For these reasons, the Commission considers that the AER's approach is a more cost effective approach and will likely achieve effective enforcement that is consistent with the Commission's intention.

A.1.8 The Commission's finding in relation to this issue in this final Rule determination

The Commission maintains its finding in the draft Rule determination in relation to this issue, subject to the additional finding in this final Rule determination.

The Commission notes Pacific Hydro's comments relating to the Reliability Panel's development of the template for generator compliance programs.

The Commission determines that the Reliability Panel will take into account the NEO when the Reliability Panel develops the template for generator compliance programs.

The Commission is amending the new transitional clauses for the implementation of the template, subsequent changes to that template, and changes following the review of the template (draft rules 4.15(c)(3) and 11.19) as follows:

- that the Panel will determine at its discretion during its consultation whether the implementation dates for Registered Participants to respond to the template should be extended; and
- Registered Participants who are currently not complying with the existing compliance program requirements will be covered under the Old Clause 5.7.3(b) of the transitional clause (in addition to Registered Participants currently complying).

The Commission does not accept that a dispute resolution process should be included in the development or modification of the template for generator compliance programs.

The Commission notes Grid Australia's proposal to include connection agreements and applicable technical requirements of clause S5.2.5 in the template for generator compliance programs and points raised in the Roaring 40s' submission. The Commission considers that the Reliability Panel will undertake public consultation with NSPs, in addition to NEMMCO and Generators, when it develops the template for generator compliance programs in accordance with clause 8.8.3 of the Rules.

With respect to making amendments to the template for generator compliance programs, which is part of the development process, the Commission determines that:

- the review process for the Reliability Panel to develop (including reviewing and amending) the template will be based on the public consultation process under clause 8.8.3;
- the Commission will initiate the review process for developing the template; and
- the Rules will not contain principles for when a review of the template should be initiated;
- the draft clause 8.8.1(2b) will be amended to be consistent with the public consultation process under clause 8.8.3.

The Commission accepts the AER's reasoning on why it should not be responsible for accepting or rejecting compliance programs, subject to the following conditions:

- the AER will regularly conduct spot audits of selected generators' compliance programs as part of its compliance monitoring activities; and

- Generators will engage with external auditors to independently audit their compliance programs to determine whether they are required to amend their compliance programs and amend if required.

A.2 Timeframe for rectification of non-conformance

A.2.1 The NGF proposal

The NGF considered 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”.¹⁰⁸ It suggested 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”.¹⁰⁹ It considered this as the issue for both recommendations 7 and 8 of the 2006 Review Report.¹¹⁰

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”;¹¹¹ and
- “allows participants to seek a review from the AER regarding the time allowed by NEMMCO for [participants to rectify] non-conformances”.¹¹²

The NGF suggested 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”.¹¹³

A.2.2 First round 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,

¹⁰⁸ The NGF Rule change proposal, p.2.

¹⁰⁹ Ibid., Pp.2-3.

¹¹⁰ Ibid.

¹¹¹ Ibid., p.3.

¹¹² Ibid., p.4.

¹¹³ Ibid., p.3.

request in writing and with reasons to the AER to review the rectification period.”¹¹⁴
This proposed new rule relates to Recommendation 7 from the 2006 Review Report.

NEMMCO supported the NGF’s proposed rule 4.15(n) because it considered that:¹¹⁵

- “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 Second round submissions

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

A.2.4 The Commission's consideration and reasoning in the draft Rule determination

In the 2006 Review Report, the purpose of recommendations 7 and 8 were described as follows:¹¹⁶

- 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 was considered to be 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.

¹¹⁴ Ibid., p.13.

¹¹⁵ NEMMCO submission, 4 April 2008, p.3.

¹¹⁶ 2006 Review Report, p.83.

A.2.5 The Commission's finding in relation to this issue in the draft Rule determination

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 accepted 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 stated 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".¹¹⁷

The Proposed Rule addresses Recommendation 9. It "requires NEMMCO to notify the AER of any notification it receives regarding non-conformance with performance standards".¹¹⁸

The NGF also suggested 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".¹¹⁹

A.3.2 First round submissions

A.3.2.1 NEMMCO

NEMMCO supported the NGF's proposed rule 4.15(f) because it considered this rule "clarifies NEMMCO's reporting obligations" regarding generator non-conformance with performance standards.¹²⁰ However, NEMMCO considered 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)".¹²¹

A.3.2.2 VENCORP

VENCORP noted 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

¹¹⁷ The NGF Rule change proposal, p.3.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ NEMMCO submission, 4 April 2008, p.3.

¹²¹ Ibid.

effectively assess generator compliance programs".¹²² However, VENCORP suggested that NEMMCO may not be able to provide all this information.¹²³ VENCORP also proposed that the AER be given "the ability to access information from sources other than NEMMCO".¹²⁴ VENCORP provided an example where the AER may source information from the NSP with respect to localised performance standards.¹²⁵

A.3.3 Second round submissions

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

A.3.4 The Commission's consideration and reasoning in the draft Rule determination

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).¹²⁶ 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.¹²⁷

The NGF's proposed rule 4.15(f) on NEMMCO's reporting obligations was considered to be 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, was considered to be 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.

¹²² VENCORP submission, 18 April 2008, Pp.1, 3.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ 2006 Review Report, p.83.

¹²⁷ Ibid.

A.3.5 The Commission's finding in relation to this issue in the draft Rule determination

With the exception of the NGF's proposal to change the term "non-compliance" and "breach" with "non-conformance" (and any other like terms),¹²⁸ the Commission accepted the NGF's proposed rule 4.15(f).

The Commission 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 noted VENCORP's proposal on how the AER can access information from sources other than NEMMCO. As this issue related to the inclusion of the localised performance standards in the template for generator compliance programs, the Commission stated that 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 considered that "the existing Rules do not contain a provision that readily allows for the correction of performance standards found to be incorrect".¹²⁹ It pointed to rule 4.15 and clause 5.3.8 as not covering what is to be done to change the standard.¹³⁰

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".¹³¹ The NGF considered that this "allows registered performance standards to be adjusted where all relevant parties agree that the standard is incorrect".¹³²

A.4.2 First round submissions

A.4.2.1 NEMMCO

NEMMCO proposed a new change by suggesting that rule 4.13 and any references to it be deleted from the existing Rules.¹³³ It argued that "clause 4.13 was added to the

¹²⁸ This particular issue is discussed in section A.6 of this document.

¹²⁹ The NGF Rule change proposal, p.3.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

¹³³ NEMMCO submission, 4 April 2008, p.1.

Rules as a transitional arrangement for Tasmania's entry into the NEM", and "Tasmania has [now] transitioned into the NEM".¹³⁴

Additionally, NEMMCO sought the deletion of rules 4.14(a)-(m) as it considered they no longer apply.¹³⁵

NEMMCO proposed 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.¹³⁶

NEMMCO noted that a generator informs the NSP and NEMMCO when the generator proposes to alter the generating system under clauses 5.3.9(b) and S5.2.4.¹³⁷ Likewise, NEMMCO proposed that clause S5.2.4 also trigger the generator to inform the NSP and NEMMCO under the NGF's proposed rule 4.14(p).¹³⁸ 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.¹³⁹

A.4.3 The Commission's consideration and reasoning in the draft Rule determination

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.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid., p.2.

¹³⁷ Ibid., p.3.

¹³⁸ Ibid.

¹³⁹ The NGF Rule change proposal, p.9.

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 supported this change.¹⁴⁰

A.4.4 The Commission's finding in relation to this issue in the draft Rule determination

The Commission accepted 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"¹⁴¹ 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
- the new cost recovery clauses will be included in rule 4.14 as proposed by NEMMCO.

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

A.4.5 Second round submission

A.4.5.1 NGF

The NGF indicates its support for NEMMCO's first round submission to include a provision in clause S5.2.4(b)(2) that inserts "rule 4.14(p)" in addition to the existing clause 5.3.9(b).¹⁴² The NGF considers that the insertion of "rule 4.14(p)" requires a generator to provide the necessary information to support a change to a performance standard.¹⁴³ However, the NGF regards that the proposed change to clause S5.2.4(b)(2) broadly implies that a generator would also be required to completely resubmit the entire information.¹⁴⁴ To address these concerns, it proposes that a new provision in the Rules should be created to limit information that has changed from that negotiated under the connection agreement.¹⁴⁵

¹⁴⁰ The NGF supplementary presentation, 1 May 2008, p.6.

¹⁴¹ The NGF Rule change proposal, p.3.

¹⁴² The NGF submission, 11 August 2008, p.2.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

A.4.6 The Commission's consideration and reasoning in this final Rule determination

Clause S5.2.4 had one change in the draft Rule which was to insert “rule 4.14(p)” in clause S5.2.4(b)(2). However, given the NGF’s comments, the Commission considers that this change could result in an inefficient process. It considers that it would be reasonable that a generator should only be required to submit updated information rather than all the information.

A.4.7 The Commission's finding in relation to this issue in this final Rule determination

The Commission maintains its finding in the draft Rule determination in relation to this issue, subject to the additional finding in this final Rule determination.

The Commission accepts the NGF’s proposal for clause S5.2.4 to be amended with additional amendments by the Commission so that generators will only be required to submit to NEMMCO updated information rather than all the information to support a change to its performance standard.

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 suggested 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”.¹⁴⁶ It suggested that the latter is “dealt with elsewhere in the Rules”.¹⁴⁷

A.5.2 Submissions

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

A.5.3 The Commission's consideration and reasoning in the draft Rule determination

The NGF argued 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).

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

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 in the draft Rule determination

With the exception of the NGF's proposal to change the term "non-compliance" and "breach" with "non-conformance" (and any other like terms),¹⁴⁸ the Commission accepted that rule 4.15 should only apply to operation of plants covered by performance standards and not for operation of plants in general.

A.6 Rename "non-compliance" and "breach" to "non-conformance"

A.6.1 The NGF proposal

The NGF suggested 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.¹⁴⁹ It argued that "a variation by a plant from a performance standard" is not an automatic breach.¹⁵⁰ Therefore, the NGF proposed 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 in the draft Rule determination

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",¹⁵¹ 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.

¹⁴⁸ This particular issue is discussed in section A.6 of this document.

¹⁴⁹ The NGF Rule change proposal, p.3.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

The meaning of “non-conformance” and “non-compliance” are not defined terms (under the Rules). 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.

A.6.4 The Commission's finding in relation to this issue in the draft Rule determination

The Commission did 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 was a new issue from submissions.¹⁵² In addition to this, NSPs being able to access information on generator performance was also a new issue.¹⁵³

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.¹⁵⁴ However, when it relates to NSPs being given information in addition to NEMMCO in particular, the NGF preferred that NSPs be provided no more than the same information.¹⁵⁵

A.7.2 First round submissions

A.7.2.1 Grid Australia

Grid Australia was concerned that “TNSPs are not sufficiently informed regarding generator performance” if NSPs are not involved in developing “generator

¹⁵² NEMMCO submission, 4 April 2008, Pp.2-4; VENCORP submission, 18 April 2008, Pp.1-3; Grid Australia submission, 4 April 2008, Pp.1-4.

¹⁵³ Grid Australia submission, 4 April 2008, Pp.1-4.

¹⁵⁴ The NGF supplementary presentation, 1 May 2008, p.7.

¹⁵⁵ Ibid.

compliance programs”.¹⁵⁶ It noted that NSPs require this information “to discharge their power system security responsibilities”.¹⁵⁷ Therefore, it proposed a number of amendments to rule 4.15 to include NSPs in the process.¹⁵⁸

A.7.2.2 NEMMCO

As one of the parties affected, NEMMCO proposed that the advice of NSPs be sought and that NSPs be involved in the process for “determining or modifying compliance program guidelines”.¹⁵⁹ It offered amendments to the NGF’s proposed clause 8.8.1(a)(2b) to implement this.¹⁶⁰

The NEMMCO submission also proposed that the information being provided by the generator when a performance standard is changed be also included in clause S5.2.4.¹⁶¹ 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 proposed that NSPs “be more involved in the development of the performance standards guidelines and the approval of specific requirements for individual compliance programs”.¹⁶² Its reasons were:¹⁶³

- “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 were consulted.

A.7.3 The Commission's consideration and reasoning in the draft Rule determination

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

¹⁵⁶ Grid Australia submission, 4 April 2008, p.1.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ NEMMCO submission, 4 April 2008, p.4.

¹⁶⁰ Ibid.

¹⁶¹ Ibid., p.3.

¹⁶² VENC Corp submission, 18 April 2008, Pp.1-2.

¹⁶³ Ibid., p.2.

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, VENCORP'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.

A.7.4 The Commission's finding in relation to this issue in the draft Rule determination

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

The Commission noted 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 publicly when developing the template for generator compliance programs.

A.7.5 Second round submission

A.7.5.1 NGF

The NGF considers that Grid Australia, in its first submission, "correctly argues that TNSPs require information on results from the compliance plan".¹⁶⁴ However, the NGF disagrees with Grid Australia's argument that the NGF's proposal, in particular the deletion of clause 5.7.3(b), reduces NSPs being able to access compliance plan results from generators.¹⁶⁵ The NGF considers that clause 4.15(c)(4) addresses Grid Australia's concern and that NSPs only require information on compliance plan results.¹⁶⁶

The NGF also disagrees with Grid Australia's proposal for NSPs to be included in clause 4.15(d).¹⁶⁷ It considers that this clause only applies to the AER and that the proposed inclusion of NSPs would give them the equivalent status as the AER.¹⁶⁸ It recommends that reference to NSPs be removed from clause 4.15(d).¹⁶⁹

¹⁶⁴ NGF submission, 11 August 2008, p.1.

¹⁶⁵ Ibid., p.1.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid., p.2.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

A.7.6 The Commission's consideration and reasoning in this final Rule determination

The inclusion of NSPs in the draft Rule was aimed to address Grid Australia's concern that it will be "sufficiently informed regarding generator performance to discharge their power system security responsibilities".

Clause 4.15(d) in the draft Rule only specifies that the relevant NSP in addition to the AER may request the generator to deliver particular information to the AER. Nevertheless, given the comments from the NGF, the Commission considers that the inclusion of NSPs in clause 4.15(d) may cause confusion to industry as to the role of the NSP.

Rules 4.15(i)(4) and 4.15(f) also provide that NEMMCO is required to notify the AER (as part of NEMMCO's reporting obligations to the AER) if there is, or is likely to be, a breach by the generator of its performance standard. The Commission considers the perception of duplicating the roles of the NSP with NEMMCO and mixing the roles of the NSP with the AER would risk inefficient operation and use of the electricity services for reliability, safety and security of the NEM.

A.7.7 The Commission's finding in relation to this issue in this final Rule determination

The Commission maintains its finding in the draft Rule determination in relation to this issue, subject to the additional finding in this final Rule determination.

The Commission accepts the NGF's proposal for the reference to NSPs in clause 4.15(d) to be deleted.

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

The following recommendations were extracted from the 2006 Review Report.¹⁷⁰ 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.

¹⁷⁰ 2006 Review Report, Pp.9-10.