

## Compliance with dispatch instructions

11 February 2016

CS Energy welcomes the opportunity to comment on the Draft Determination: Compliance with Dispatch Instructions. CS Energy considers that AEMC's Draft Determination is not consistent with requirements under the National Electricity Objective (NEO).

We question the practical ability for participants to respond to the absolute obligation of 'must comply' and agree with the sentiment expressed by the AER in the 2006 compliance guideline. Formally including a reasonable endeavours obligation into the Rule reflects the practicalities of scheduling and dispatching plant. The AER would still have power to successfully allege breaches of 4.9.8 (a) if there are any unreasonable breaches of the rule. It is our opinion that the enforcement actions brought forward by the AER<sup>1</sup>, including the Snowy case, would likely have resulted in similar outcomes if the Rule was 'reasonable endeavours' rather than 'must' comply .

Therefore a 'reasonable endeavours' obligation to comply with dispatch instructions would not be to the detriment of the National Electricity Objective (NEO).

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<sup>1</sup> AEMC Draft Determination, page 19

## **Our position has not changed since the consultation paper**

For the reason that both, or either, market efficiency and system security can be affected we considered, in response to the Consultation Paper, Rules 4.9.8(a) and 4.9.8(b) are required to dissuade unreasonable instances of a generator not endeavouring to follow a dispatch instruction or supply a dispatch offer. We supported these Rules being a civil penalty provision.

We agreed with the AER's 'AER Compliance Bulletin, No 1' ('2006 guidance') which interpreted absolute compliance with the Rule as physically impossible in all cases. We noted that during the period when the 2006 Guidance stood:

- no evidence was provided, that the NEM was not operating securely;
- no evidence has been provided that there was a material problem with market efficiency through a disparity between dispatch and pricing<sup>2</sup>;
- Participants knew the Rules and knew AER would enforce unreasonable and intentional breaches of Rule 4.9.8(a) that were not consistent with the 2006 guidance; and
- we considered the Rule ensured the level of security and market efficiency required.

Accordingly, we concluded changing the Rule to 'reasonable endeavours' was not likely to have any material impact on the level of security and market efficiency of the NEM because we considered that this was how participants were operating in accordance with the 2006 guidance and the change was merely to formalise the 2006 guidance into law. Therefore a 'reasonable endeavours' obligation to comply with dispatch instructions would not be to the detriment of the National Electricity Objective (NEO).

## **The AER's position has become clearer**

The AER has provided an updated draft of the 2006 Guidance ('2015 Guidance') in response to the AEMC consultation paper. In this 2015 Guidance the AER corroborates CS Energy's statements in response to the Consultation Paper: the AER's position has changed on clause 4.9.8(a) because the AER no longer make reference to the need to "endeavour to", "physical impossibility" and "minor departures" as it had done in the 2006 Guidance.

The 2015 Guidance expresses how the AER interprets the obligation and what it considers the limits for non-compliance to be: strict compliance.

## **Historic performance is not a reliable indicator of future performance**

It is our view that the level of compliance required under 4.9.8(a) has become more onerous than when the 2006 Guidance stood. Yet this contradicts the Draft Determination, where it is stated in response to the comments by CS Energy (in response to the Consultation paper):

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<sup>2</sup> Referencing 3.1.4(a)(4) – market design principle

*“The Commission considers that regardless of the wording of the relevant documents, in practice, the AER’s approach has remained consistent and should provide sufficient certainty to market participants<sup>3</sup>.”*

A problem with this statement is that it is justified on the basis of the regulator’s approach to enforcing Rule 4.9.8(a) prior to the AER vs. Snowy<sup>4</sup> case, which is when the 2006 Guidance stood, rather than thereafter where we understand that the AER will expect strict compliance.

This is the very reason why Snowy proposed the Rule change in April 2015, because participants are now *“in effect, at the mercy of the AER<sup>5</sup>”* post the AER vs. Snowy case. The following statement in the Draft Determination provides little solace for participants:

*“Market participants should be able to expect that the AER is unlikely to take enforcement action for minor, “technical” failures to comply with dispatch instructions<sup>6</sup>.”*

In considering penalties or undertakings for failures to comply, an important consideration would be whether the participant is able to offer an enforceable undertaking to improve future compliance with the Rule. Yet an enforceable undertaking is unlikely given the participant cannot guarantee it would be successful: therefore any subsequent breach of the undertaking would expose the participant.

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<sup>3</sup> AEMC Draft Determination, page 19

<sup>4</sup> On 12 February 2015, the Federal Court of Australia declared by consent that Snowy Hydro had breached clause 4.9.8(a) on nine occasions alleged by the AER. It appears that the interpretation of 4.9.8(a) in that case did not contemplate the compliance guideline issued by the AER in 2006.

<sup>5</sup> Snowy Hydro, Rule change proposal 13<sup>th</sup> April 2015, page 5

<sup>6</sup> AEMC Draft Determination, page 18

## **“Technical” failures to comply with dispatch instructions**

One of the reasons given in the Draft Determination for retaining the ‘must comply’ is that it is important to maintain system security. The assumption in the Draft Determination is that ‘reasonable endeavours’ is a reduced standard which could result in more instances of non-compliance with dispatch instructions.

We consider this unlikely for two reasons.

Firstly we believe ‘reasonable endeavours’ is akin to the AER’s interpretation expressed in the 2006 Guidance. We don’t believe there was widespread wilful non-compliance with the Rule during the period where this interpretation of the rule stood.

Secondly ‘technical’ non-compliance is likely to be the result of inadvertent or uncontrollable deviations from dispatch instructions. For example, when a unit is on Automatic Generation Control (AGC) it is probable that a deviation from the dispatch instruction could occur. Delays can also occur when operating plant that is not on AGC even when an operator is trying their utmost to comply with the dispatch instruction. It is unlikely that the participant will wilfully reduce compliance with dispatch instructions because to do so would remain a breach a ‘reasonable endeavours’ requirement.

## **Other matters**

### **Alternative solutions**

We find the alternative solution proposed by the AER<sup>7</sup> interesting. The AER’s proposal would require generators are paid in accordance with the lower of their target or actual generation for price greater than zero and the higher of their target or actual for prices less than or equal to zero.

Non-compliance can affect settlement amounts, resulting in a transfer of wealth, without affecting power system security and is therefore relevant to 3.1.4(a)(4). A non compliance with a dispatch instruction can result in the price calculated from a dispatch instruction that is not complied with. For example a generator not increasing generation (or not starting) and yet setting the price lower, (than would otherwise have been calculated), would not be affected by the AER’s proposal. For this reason the AER’s proposal indicates it may focus, when enforcing 4.9.8(a), on generator participants with an incentive to increase price (rather than reduce price) and not on the quantum (in terms of MW or time) non-compliance with dispatch instructions. The AER’s discretion in enforcing 4.9.8(a) is not constrained by Rule 3.1.4(a)(4) or the NEO and could affect transfers of wealth between producer and consumer.

### **4.9.8(b) – units can comply with the latest dispatch offer**

We remain of the opinion the ‘sister’ rule to 4.9.8(a), which is 4.9.8(b), requiring participants ‘must’ ensure their units can comply with the latest dispatch offer should also be amended to reasonable endeavours.

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<sup>7</sup> AER Submission to Consultation Paper, 23 October 2015, page 8