

31 July 2006

Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box H166
AUSTRALIA SQUARE NSW 1215

Dear Dr Tamblyn

**Review of enforcement and compliance with technical standards
Draft Report**

Integral Energy welcomes the opportunity to comment on the draft report of the Australian Energy Market Commission (AEMC) titled "Review of enforcement and compliance with technical standards, Draft Report" (Draft Report).

Integral Energy considers an effective governance framework for technical standards requires clear responsibilities for setting, monitoring, investigating and enforcing technical standards. As a general principle, Integral Energy is concerned to ensure that generators do not have market power when establishing forward electricity contracts and as such Integral believes that consideration should be given to the further dis-aggregation of generators.

Adequacy of current technical standards

The Ministerial Council on Energy (MCE) terms of reference for the review provides for the investigative, rectification and penalty provisions under the Rules to ensure an effective enforcement and compliance regime. Therefore, the adequacy of current technical standards appears to be outside the terms of reference set by the MCE for this review.

Integral Energy notes that submissions in response to the Issues Paper have raised the adequacy of the technical standards and performance, and that the AEMC is concerned to ensure the effectiveness of its recommendations in the Draft Report for enforcement and compliance of the technical and performance standards and processes. Whilst amendments to the Rules with respect to registration of performance standards for existing generation plant and performance standards for future generation connections may be desirable, it would appear that the issue to be dealt with by the AER is non-compliance with performance standards, rather than the absence, or adequacy, of performance standards.

Integral Energy provides the following comments with respect to the adequacy of current technical standards:

- Integral Energy considers that the setting of technical standards and the processes by which they are determined should be decided by those persons best informed and most familiar with the elements comprising technical standards and their practical implementation, including their potential impacts.

Therefore, we consider it appropriate that technical standards be set by the AEMC on the advice of the Reliability Panel, NEMMCO and network service providers (with respect to network plant under Schedule 5.1); customers (with respect to Schedule 5.3) and

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generators (with respect to generation under Schedule 5.2). The AEMC should also set the process for revising technical standards in consultation with industry.

Integral Energy therefore supports the AEMC recommendation that NEMMCO and the electricity supply industry request a Rule change that proposes the items identified in Recommendation 1 of the Draft Report. Integral Energy considers it appropriate that the AER be consulted with respect to the enforceability provisions for technical standards only. (*AEMC Recommendation 1*).

- Integral Energy notes the position adopted by the AEMC in its Issues Paper that the AEMC does not consider power system security and reliability standards as determined by the Reliability Panel being inside the scope of this review¹. Therefore, to ensure clarity with respect to Recommendations 2 and 3 in the Draft Report, Integral Energy submits that the AEMC expressly state that it is not the intention of Recommendations 2 and 3 of the draft Report to review the content and adequacy of the technical and performance standards. (*AEMC Recommendations 2 and 3*).

Compliance Programs monitoring and investigation

Integral Energy recognises synergies that may be obtained in a strong relationship between monitoring and compliance, however, considers that those synergies need not be effectively delivered by one entity alone.

Integral Energy considers the monitoring and investigation of breaches of technical standards appropriately lie with NEMMCO (being responsible for system security) in conjunction with the owners and operators of the relevant plant. The technical expertise and experience provided by these bodies are necessary to adequately monitor and investigate potential breaches of technical standards. Similarly, the functions, expertise and experience of the AER lies in its enforcement role under the Rules and undertaking economic regulatory functions of regulated networks, rather than the monitoring of technical standards.

Accordingly, Integral Energy submits that a more effective monitoring and investigative regime would be one where NEMMCO monitors technical standards and, where a breach occurs, the AER is provided with a copy of an investigation report prepared by NEMMCO and the relevant network service provider or generator. The AER would then have sufficient expert and factual information in which to carry out its enforcement functions with respect to the technical standards.

Integral Energy provides the following comments with respect to compliance programs, monitoring and investigation:

- Integral Energy supports the development of guidelines for compliance programs by NEMMCO to assist industry participants develop their compliance programs. (*AEMC Recommendation 4*).
- Integral Energy also supports the acceptance of compliance programs by NEMMCO and the AER that satisfy adequate information requirements and are in accordance with the Rules and guidelines developed by NEMMCO. (*AEMC Recommendation 5*).
- Integral Energy considers that the maintenance of power system security is of paramount importance in and to the NEM. Any timeframe proposed for rectifying a performance standard breach must have as an overriding consideration, the reliability, security and

¹ AEMC, MCE Directed Review, Issues Paper, Enforcement and compliance with technical standards under the National Electricity Rules, January 2006, p5

safety of the national electricity system. Accordingly, Integral Energy supports the existing construction of clause 4.15(j) of the Rules. *(AEMC Recommendation 7)*.

- A failure by a market participant to rectify a performance standard breach in the timeframe specified by NEMMCO is currently adequately addressed by clause 4.15(k) which requires NEMMCO to notify the AER of the breach. The promptness with which a participant rectifies a performance standard breach is therefore a matter for NEMMCO and the AER. Further, it is not necessary for a breach of clause 4.15(i) of the Rules to be made a civil penalty provision in order to give rise to significant economic consequences for the participant to ensure prompt rectification. *(AEMC Recommendations 9 and 10)*
- Integral Energy supports Recommendation 12 of the Draft Report, except to the extent that it recommends a penalty for technical breaches be similar to a rebidding penalty (i.e. \$1,000,000 and \$50,000 per day for every day of continuing breach) in the event faults-based liability and removal of benefits from technical breaches are adopted. Integral Energy considers the level of penalty proposed in the above circumstance is excessive and likely to result in increased prices to consumers as generators seek to pass on any increased risk exposures. *(AEMC Recommendation 12)*.
- Integral Energy submits that Recommendation 13 be amended to clarify that the intention of the AEMC-AER working group to oversee the ongoing program of work relating to technical standards does not include any setting or amending of technical standards, but is limited to the enforcement of technical standards only. Integral Energy further submits that the AEMC-AER working group consults with industry on the progress of its ongoing program of work relating to technical standards prior to each progress report being provided to the MCE. *(AEMC Recommendation 13)*.

Should you wish to discuss the issues raised in this letter, would you please contact Erik Beerden, telephone number (02) 9853 6904 or Michael Martinson on telephone number (02) 9853 4375.

Yours faithfully



Richard Powis
Chief Executive Officer