



Australian Energy Market Commission

Rule Determination

National Electricity Amendment (Resolution of existing generator performance standards) Rule 2006 No. 21

Rule Proponent
National Generators Forum

7 December 2006

Signed:

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Chairman
For and on behalf of
Australian Energy Market Commission

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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 market. 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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Contents

Abbreviations	4
Summary	5
1. National Generators Forum Rule Proposal.....	7
2. Background	9
3. Rule determination	9
3.1 The Commission’s power to make the Rule.....	10
3.2 Relevant MCE statements of policy principles	11
3.3 Matters arising from the Commission’s analysis	11
3.4 Assessment of the Rule: the Rule Making Test and the NEM objective.....	13
Attachment 1: Rule to be made	15

Abbreviations

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
Code	National Electricity Code
Commission	see AEMC
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
Rules	National Electricity Rules
TNSP	Transmission Network Service Provider

Summary

The Australian Energy Market Commission (Commission) makes this Rule determination and accompanying Rule under section 102 of the National Electricity Law (NEL). On 4 September 2006, the National Generator's Forum (NGF) submitted a Rule change request, which was co-signed by NEMMCO (the NGF proposal), to the Commission to formalise the process to be followed by NEMMCO and generators to finalise performance standards for existing eligible plant.

The NGF proposal requested that Chapter 4 of the Rules be changed to include two additional Rules, viz. Rule 4.16 'Transitional arrangements for establishment of performance standards', and Rule 4.17 'Expert determination'. Minor consequential changes were also requested to clause 4.15(b), 5.2.5(a) and the Glossary term 'performance standard'.

The NGF proposal indicated that the recommended process was consulted with Transmission Network Service Providers prior to its submission to the Commission. The NGF proposal also indicated that NEMMCO and Generators were currently following the process in the Rule proposal with a view to ensuring that performance standards are agreed by the end date of 1 June 2007. The AER has confirmed its support for the one-off process.

The Commission determined on 31 October 2006 to commence the Rule change process for the NGF proposal under sections 94 and 96 of the NEL. A notice to expedite the Rule making process under sections 95 and 96 was published by the Commission on 2 November 2006. Interested parties were advised to submit any objections in writing by 16 November 2006 and to make any submissions by 4 December 2006. The Commission received no objections to expediting the making of the Rule and no submissions regarding the content of the proposed Rule changes.

The Commission analysed the proposed Rule change with the following findings:

- The NGF proposal was submitted following a report to the MCE by the AEMC regarding the unsatisfactory registration status of generator performance standards;
- The NGF proposal had adopted one essential recommendation of the AEMC report that a suitable proponent request a Rule change to enable the performance standards of all eligible plant to be registered with NEMMCO by 30 June 2007;
- The Commission considers that the one-off processes as presented in Rules 4.16 and 4.17 are to be procedurally sound in relation to Rules 4.13, 4.14, 4.15 and Chapter 5;
- The Commission notes that clause 4.16.5(c)(1) allows a generator to continue to rely on a jurisdictional derogation unless NEMMCO requires a higher performance standard for system security purposes and NEMMCO considers that the eligible plant has a capability that is higher than the derogated performance standard. The Commission understands that clause 4.16.5(g) works to allow the parties to negotiate a higher performance standard, but that if the generator does

not participate actively in the negotiation process, then the generator could rely on clause 4.16.5(c)(1) to apply a relevant derogation, until such times as the derogation expires;

- The Commission is of the view that the one-off process is sufficiently flexible to enable NEMMCO and a generator to manage any particular combination of Rule related process difficulties with plant registration and performance standards so that by 30 June 2007 both the generating unit and its performance standard are registered with NEMMCO;
- The scheduled dates for relevant steps in the process have been adjusted, as indicated in the NGF proposal, to ensure that they are active at the date of gazettal of the Rule to be made;
- The Commission is of the view that the commencement date of 31 December 2006 will provide any generator (who for whatever reason had not commenced participation in the process) with sufficient lead time, from the making of the Rule, to become an active participant;
- The Commission notes that NEMMCO and existing Generators have commenced using the one-off process and are on track to completing the process by 30 June 2007. The Commission considers that it is appropriate to give this activity formal recognition to allow all generators to complete their performance standards registration process.

Based on these findings, the Commission has determined to make the Rule.

The Commission is satisfied that the Rule is likely to contribute to the NEM objective, and that it therefore satisfies the Rule Making Test.

The Commission also notes that through submissions to its Technical Standards Review, there was widespread industry support for proceeding with this proposal.

This Rule determination sets out the Commission's reasons for making the Rule, in accordance with the requirements of the NEL.

1. National Generators Forum Rule Proposal

The Commission makes this Rule determination and accompanying Rule under section 102 of the NEL. On 4 September 2006, the NGF¹ with signed endorsement from NEMMCO (“the NGF proposal”) submitted a Rule change request to the Commission to establish 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. The proposal is for the relevant content to be finalised through agreement or by expert determination by 1 June 2007.

The NGF proposal requested that Chapter 4 of the Rules be changed to include two additional Rules. These Rules would be located immediately after Rule 4.15 “Performance standards”, and would act to provide additional principles to support the establishment of performance standards as required by other parts of the Rules. Consequential changes to other Rules were also requested.

The new Rules are summarised as follows:

- **One-off arrangement for establishment of performance standards.**

This Rule provides a one-off process by which NEMMCO and a Generator may agree on a performance standard for eligible plant where a performance standard is not currently registered with NEMMCO. Some steps in the process may include the AER² if testing of plant or the provision of additional information is required before the performance standard is able to be registered. In the process, NEMMCO and each generator must identify the gaps or inaccuracies in performance standards (if there are any) and then negotiate to resolve them. The NGF proposes that the negotiation phase for establishing the performance standards must end by the final referral date, nominated as 1 March 2007. On this date, if the performance standard is not finalised, NEMMCO must refer the determination of the performance standard to a performance standards expert for an independent and binding determination. As part of the process, the relevant NSP is invited to advise NEMMCO of its views. Once settled, the existing connection agreements are taken to include the revised performance standards.

- **Expert determination.**

This Rule provides a process which must be followed if a performance standards expert is to be used to determine a suitable performance standard for eligible plant. This process involves the AER, a performance standards committee, NEMMCO, the Generator, and the selected expert. The expert is required to determine the performance standard and provide NEMMCO and the Generator with its written determination not later than the performance standards determination date, nominated as 1 June 2007 by the NGF.

- The Rule includes a clause that recognises the effectiveness of any actions taken in anticipation of the making of this Rule toward regulating performance standards;

¹ National Generator’s Forum – a corporate entity that represents major power generators in the National Electricity Market.

² Australian Energy Regulator

- An existing Rule relating to ‘Performance Standard Compliance’ is varied. The NGF proposal requested that an additional phrase be inserted in clause 4.15(b) to recognise the registration of the performance standards.
- An existing Rule relating to ‘Obligations of Generators’ is varied. The NGF proposal requested that sub-paragraphs (i) and (ii) of clause 5.2.5(a) be reversed, and that editorial changes be made throughout the paragraph to accommodate this reversal.
- A variation of the Glossary term ‘performance standard’. The NGF proposal requested that this definition be expanded to include point (b), being a performance standard that “is included in the register of performance standards established and maintained by NEMMCO under clause 4.14(n)”.

The NGF has advised that the changes to clauses 4.15(b) and 5.2.5(a), and the definition of ‘performance standard’ in Chapter 10 are consequential to the two new Rules proposed for Chapter 4.

The NGF proposal states that the purpose of performance standards is two fold: it allows NEMMCO to be aware of key aspects of the expected performance of generating units during contingency and other events, and it allows generators to be aware of the performance requirements of their plants. At the conclusion of the transitional process that was part of the introduction of performance standards [during 2003], those standards that were not agreed were deemed using a specified hierarchy. While this process ensured that all generating units had defined performance standards, the deeming process did not provide a clear process to determine or register performance standards and overlooked plant for which a connection agreement was in place but no one was registered with NEMMCO as the generator. The lack of performance standards has also created difficulty in the establishment of appropriate compliance plans by generators.

The NGF proposal states that during the [2003] process to agree the performance standards, some performance standards have been established that NEMMCO or generators now consider to either be too low, potentially leading to reduced asset utilisation or increased ancillary services costs, or be too high and therefore unachievable by the plant in practice. The Rule change proposed would complete the establishment of performance standards for all significant generation plant connected to the system and ensure that NEMMCO has the necessary generator technical information it requires to optimally manage the power system. In addition, generators would be able to provide assurance that their plant is maintaining those performance standards.

The NGF proposal, which is co-signed by NEMMCO, was consulted with TNSPs³ and has the formal support of the AER.

The NGF advised that NEMMCO and the relevant generators had been working on this process for some time, and accordingly the NGF proposal contained dates which the proposal anticipated would need to be altered by the Commission where a pre-date of the commencement of the Rule would occur.

³ Transmission Network Service Providers

The NGF also provided a process flow chart to assist parties in understanding the purpose of the one-off process proposed in the new Rules.

The NGF requested that the Rule change proposal be expedited as urgent and non-controversial under NEL section 96.

2. Background

The proposed Rule contains a process for determining performance standards for Generators, Market Customers and MNSPs⁴ that were connected to the network at the performance standards commencement date (16 November 2003 for regions other than Tasmania and 29 May 2005 for Tasmania).

In its recent report to the MCE concerning the enforcement of, and compliance with, the Rules technical standards, the Commission stated that the process to establish performance standards for existing generators was deficient and must be resolved as an urgent priority. During the review it became clear to the Commission that some generating systems do not have registered performance standards. Incomplete registered performance standards can be attributed to the failure of the process in the Code for agreeing or deeming registered performance standards for existing generating systems. Interested parties may refer to the details of the Commission's findings in the Final Report on the Review of Enforcement of and Compliance with Technical Standards, available from the AEMC website⁵.

The gaps and inaccuracies in the generator performance standards that currently exist have meant that NEMMCO must operate the power system more conservatively. They are also likely to make enforcement action by the AER for breaches of the standards more difficult. The Commission recommended to the MCE that it would be appropriate for NEMMCO and the electricity supply industry to bring forward a Rule change proposal to resolve the content of generator performance standards by 30 June 2007. It is the Commission's view that clear, defined enforceable standards are fundamental to the effectiveness of any enforcement and compliance regime. To ensure that such standards are in place, an effective moratorium will apply consistent with the Commission's recommendations to the MCE, and will end on 1 June 2007.

The Commission understands that NEMMCO and the Generators, acting together, have developed the process that is presented in the NGF proposal and have already commenced actively working to this process.

3. Rule determination

The Commission has determined in accordance with section 102 of the NEL to make the Rule as set out in Attachment 1 to this Rule determination. The Rule is fundamentally the proposed Rule put forward by the proponent with some drafting amendments.

⁴ Market Network Service Providers

⁵ <http://www.aemc.gov.au/electricity.php?cat=er&complete=1>

On 2 November 2006, under section 94 of the NEL, the Commission determined to commence initial consultation on this proposal by publishing a notice under sections 95 and 96 of the NEL. In the notice the Commission advised that it intended to expedite the making of the Rule subject to any written objections. Objections were required to be submitted by 16 November 2006. Interested parties had 4 weeks to make submissions, which closed on 4 December 2006.

No party submitted an objection to expediting the making of the Rule.

No party made a submission regarding the content of the proposed Rule changes.

In coming to its decision, the Commission has considered:

1. the Commission's powers under the NEL to make the Rule;
2. the proponent's Rule change proposal including the proposed Rule;
3. that there were no objections for expediting the making of the Rule;
4. that there were no other submissions received; and
5. the Commission's analysis as to the ways in which the Rule will or is likely to contribute to the achievement of the NEM objective so that it satisfies the statutory Rule making test.

3.1 The Commission's power to make the Rule

The Commission is satisfied that the Rule proposed by the NGF 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 Rule satisfies the criteria of section 34 of the NEL as it relates to the operation of the NEM and the activities of persons participating in the NEM.

In addition, the Rule relates specifically to matters on which the Commission may make Rules that are provided for in clauses 10, 11, 13, and 14 of Schedule 1 of the NEL where:

- clause 10 relates to the disconnection of generating systems, transmission systems, distribution systems or other facilities;
- clause 11 relates to the operation of generating systems, transmission systems, distribution systems or other facilities;
- clause 13 relates to access to electricity services provided by means of transmission systems and distribution systems; and
- clause 14 relates to...generating systems...to test...the generating systems...for the purpose of determining whether those generating systems...comply with the Rules.

Under clause 94 of the NEL, the Commission determined that the request for the Rule contained all information prescribed by the regulation, and was not misconceived or lacking in substance. Under clause 96 of the NEL, the Commission determined that the request for the Rule to be made was for a non-controversial Rule change. The reasons for these determinations are provided in section 3.3 of this determination.

On the basis of making a non-controversial Rule, the Commission is permitted to expedite the making of the Rule if no written objections are received within two weeks of publishing the notice under sections 95 and 96.

3.2 Relevant MCE statements of policy principles

The NEL requires the Commission to have regard to any MCE statements of policy principles in applying the Rule Making test. The Commission notes that currently, there are no specific MCE statements of policy principles that directly relate to the establishment of performance standards for existing generators. However, the MCE has taken a strong interest in this matter.

In November 2005, the MCE formally requested the AEMC to review the enforcement of, and compliance with, the technical standards under the National Electricity Rules. In September 2006, the Commission published its final report on this matter, and has had regard to that report in making this determination.

3.3 Matters arising from the Commission's analysis

The Commission found that there were no substantive matters requiring alteration in the NGF proposal as it was in line with the Commission's expectation arising from the separate MCE review. Some minor drafting amendments have been made. The Commission's reasons for accepting the NGF proposal are as follows:

The Commission's consideration and reasoning:

The Commission determines to accept the NGF proposed changes to performance standards because the proposal aims to create a one-off fast track process to ensure that all Generators with eligible plant have registered performance standards. The Commission notes that the NGF proposal effectively authorises a moratorium for existing generators who currently would be in breach of the Rules in regard to registered performance standards.

The Commission's reasons for accepting the NGF proposal are noted below.

- (i) The NGF proposal was submitted in the light of a report to the MCE by the AEMC regarding the status of generator performance standards;
- (ii) The NGF proposal has adopted one essential recommendation of the AEMC report whereby a complete set of performance standards for all eligible plant be in place by the end of June 2007;
- (iii) The Commission considers that the one-off process as presented in the proposed Rule is procedurally sound and will enable NEMMCO to register performance standards for all eligible plant by 30 June 2007;
- (iv) The Commission accepts that the principles necessary for the engagement of the performance standard expert, and the publication of the expert's determination, have been detailed to a level that should achieve registration of performance standards for all generators who are not able to reach a negotiated agreement with NEMMCO.

- (v) The Commission notes that clause 4.16.5(c)(1) allows a generator to continue to rely on a jurisdictional derogation unless NEMMCO requires a higher performance standard for system security purposes and NEMMCO considers that the eligible plant has a capability that is higher than the derogated performance standard. The Commission understands that clause 4.16.5(g) works to allow the parties to negotiate a higher performance standard, but that if the generator does not participate actively in the negotiation process, then the generator could rely on clause 4.16.5(c)(1) to apply the derogation, until such times as the derogation expires;
- (vi) The Commission is of the view that this one-off process is sufficiently flexible to enable NEMMCO and a generator to manage any particular combination of Rule related process difficulties with plant registration and performance standards so that by 30 June 2007 both the generating unit and its performance standard are registered with NEMMCO;
- (vii) The Commission notes that NEMMCO and existing Generators have commenced using the one-off process and are on track to completing the process by 30 June 2007. The Commission considers that it is appropriate to give this activity formal recognition to allow all generators to complete their performance standards registration process;
- (viii) The Commission accepts that the other minor amendments are consequential to the transitional process for establishing satisfactory performance levels for all existing generators;
- (ix) There were no written objections to expediting the making of the Rule, nor any submissions regarding the content of the proposed Rule changes. The Commission also notes that through submissions to its Technical Standards Review, there was widespread industry support for proceeding with this proposal Accordingly, the Commission is of the view that all generators will utilise this process to remove any future compliance problems with performance standards; and
- (x) The one-off process is to formally commence on 31 December 2006. The Commission is of the view that this will provide any generator (who for whatever reason had not commenced participation in the process) with sufficient lead time, from the making of the Rule, to become an active participant.

In regard to the indicative but retrospective process dates, the Commission has determined to change the indicative dates in the NGF proposal to the following set of dates:

Name of date	Indicative date	Determined date
performance standard notification date	1 August 2006	29 December 2006
performance standard response date	31 August 2006	5 January 2007
performance standards agreement date	30 September 2006	10 January 2007
proposed performance standards acceptance date	31 October 2006	15 January 2007

Name of date	Indicative date	Determined date
performance standards acceptance date	30 November 2006	22 January 2007
initial referral date	15 January 2007	29 January 2007
final referral date	1 March 2007	1 March 2007
performance standards determination date	1 June 2007	1 June 2007

The Commission notes that the set of determined dates will not delay the determination of the performance standards expert nor the publication of the expert's determination. To achieve this, the dates for finalising negotiations with NEMMCO have been truncated to one week periods throughout January 2007. The Commission considers that this is fair to all parties as the NGF proposal clearly states that the proposal is being actively followed by all Generators.

Accordingly, the Commission has made the necessary Rules to incorporate the NGF proposal.

3.4 Assessment of the Rule: the Rule Making Test and the NEM objective

The Rule Making Test requires the Commission to be satisfied that a Rule that it proposes to make will contribute to the NEM objective. The NEM objective is defined in section 7 of the NEL.

The test requires the Commission to consider the implications of the proposed new Rule for the efficient investment in, and efficient use of electricity services, in respect of specified elements which impact on the long term interests of consumers of electricity. The Commission has applied the Rule Making Test to the NGF proposal and has also taken into consideration minor drafting amendments made by the Commission.

The Commission has tested these various changes and has assessed that incorporating the NGF proposal into the Rules will, or is likely to, contribute to the NEM objective by:

- completing the population of the NEMMCO performance standards register of performance standards for eligible plant which may be examined by the AER and AEMC;
- removing any current process impediments that have been preventing NEMMCO and Generators from finalising the performance standard of their eligible plant; as required by the Rules. The full completion of a current Rule provision will release these parties from the burden of on-going administrative costs to the long term benefit of consumers;
- increasing assurance that the power system will perform as expected during times of system stress. The MCE, AER, NEMMCO and NSPs will all be beneficial recipients of this assurance, which will improve the cost effectiveness of their role in the NEM. Generators will benefit through their firming up of procedures for compliance testing to ensure that the power system will perform as expected during contingency events. Consumers will benefit from maximised reliability and security of electricity supply;

- increasing NEMMCO's and NSPs' planning and operating efficiency through their additional confidence in the responsiveness of the power system;
- allowing NEMMCO to negotiate a higher performance standard if the current actual capability exceeds the standards; and
- allowing NEMMCO to negotiate a lower performance standard if the current actual capability is less than the desired standard, and the parties agree that the lower standard is all that should be required. The Commission notes that this is consistent with the existing grandfathering arrangements in the Rules.

Specifically, the Commission accepts that the transitional process will provide a material input into the ability of existing Generators to deliver improvements around the efficient investment in and use of electricity services for the long term interests of consumers of electricity with respect to the reliability and security of supply of electricity, and the reliability and security of supply of the national electricity system.

For this reason, the Commission has concluded that these changes (from the NGF proposal and the additional alterations adopted by the Commission) meet the NEM objective and consequently satisfies the Rule making test.

Accordingly, the Commission has determined to make the Rule as set out in Attachment 1 "Rule to be made".

Attachment 1: Rule to be made