

15 February 2016

Australian Energy Market Commission
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Sydney South NSW 1235

Lodged online at www.aemc.gov.au

ERC0187: Compliance with Dispatch Instructions Draft Determination

The Australian Energy Council (AEC) welcomes the opportunity to make a submission to the Australian Energy Market Commission's (AEMC) draft determination on compliance with dispatch instructions.

The AEC represents the policy positions of 22 electricity and downstream natural gas businesses operating in competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

It remains the industry's view that the current strict compliance obligation under 4.9.8(a) to comply with dispatch instructions is a material regulatory risk. This regulatory risk has been magnified by amendments to the AER's guidance. On 14 May 2015, the AER released a compliance report¹, explaining its approach to the requirements of clause 4.9.8. In this report, the AER has removed the following key paragraph which was present in its 2006 guidance:

*While Registered Participants must endeavour to comply with dispatch instructions, the AER recognises that exact compliance with dispatch instructions in every dispatch interval is a physical impossibility. **Accordingly, the AER does not intend to pursue a breach of clause 4.9.8(a) with respect to minor departures from dispatch instructions that occur despite the best endeavours of a Registered Participant to comply** (emphasis added).*

Based on previous AER guidance, AEMO's procedures, and the Commission's Draft Determination² it is clear all NEM institutions envisaged variations of some degree from dispatch instructions. It is then inconsistent for the Rules under 4.9.8(a) to impose a "must comply" obligation on Registered Participants, which in a legal sense implies exactly meeting dispatch targets.

It is the AEC's interpretation that the AEMC's Draft Determination ruling was premised on the AER not inappropriately exercising its discretion to pursue minor "technical breaches" of 4.9.8(a). For instance, the AEMC states³:

¹ AER Quarterly Compliance Report: January-March 2015.

² AEMC, Draft Determination – Compliance with Dispatch Instructions, page 17. The AEMC states, "The Commission acknowledges that exact compliance with dispatch instructions may not always be possible due to the physical realities of operating generators. For example, the variability in the fuel to energy conversion process and accuracy of metering equipment causes fluctuations in a generator's output."

³ AEMC, Draft Determination – Compliance with Dispatch Instructions, page 19.

The small number of AER enforcement actions relative to the number of “technical breaches” appears to show an approach that is consistent with the AER’s stated approach.

However, as outlined earlier, the AER has removed from its guidance the concept of “best endeavours of a Registered Participant to comply.” In other words, the AER’s stated approach may have changed from its past approach where it has only issued three infringement notices and instituted one legal proceeding for a breach of clause 4.9.8(a).

The Rule change Proponent has outlined compliance costs related to minimising the regulatory risk of being in breach of the current exact compliance obligation to comply with dispatch instructions. The AEC notes that the Commission recognises this cost, for example⁴, “the Commission acknowledges that relaxing the standard for compliance with the rule may reduce the costs for some participants of complying with dispatch instructions”. However, the Commission states that⁵, “the current standard is likely to contribute to lower total system costs and therefore contribute to the NEO”. The AEC would like to see analysis to underpin the AEMC’s assessment and conclusion on compliance costs.

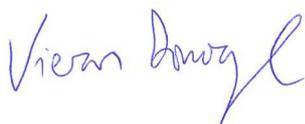
Way Forward

The removal of the AER’s guidance that they would not enforce 4.9.8(a) in an exact sense has increased regulatory risk for industry participants. The AEC advocates that the Final Determination to this Rule change proposal:

1. Considers reframing the “reasonable” endeavours to comply with dispatch instructions to a “best” endeavours obligation. This would in effect increase the standard of obligation to comply with dispatch instructions issued by AEMO; and
2. Require the AER to re-issue guidance on its enforcement framework to remove the regulatory risk from enforcement action for minor “technical” failures to comply with dispatch instructions.

The AEC appreciates the opportunity to respond to this consultation. Any questions about our submission should be addressed to Panos Priftakis, by email to panos.priftakis@energycouncil.com.au or by telephone on (03) 9205 3115.

Yours sincerely



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⁴ AEMC, Draft Determination – Compliance with Dispatch Instructions, page 25.

⁵ AEMC, Draft Determination – Compliance with Dispatch Instructions, page 25.