

27 March 2006

Australian Energy Market Commission
PO Box H166
AUSTRALIA SQUARE NSW 1215

Dear Sir,

**Re: Issues Paper - Enforcement and Compliance with
Technical Standards under the NER**

ElectraNet wishes to make the following submission regarding the AEMC's Issues Paper - Enforcement and Compliance with Technical Standards under the NER.

Terms of Reference

ElectraNet also wishes to correct a statement in the Terms of Reference that implies ElectraNet failed to act diligently on the findings of NEMMCO's review of the incident of 8 March 2004.

Section 1.4.1 of the Terms of Reference states:

"An incident on 8 March 2004, which resulted in approximately 650 MW of under-frequency load shedding in the South Australian region. Subsequent investigations by NEMMCO identified some possible actions by NRG Flinders and ElectraNet. None of those actions had been implemented a year later and further investigations to resolve the issue did not appear to be proceeding with sufficient priority."

ElectraNet wishes to draw the Commission's attention to the subsequent report issued by NEMMCO¹ that reviewed the progress of recommendations flowing from the 8 March 2004 incident and withdrew the recommendations regarding ElectraNet:

"NEMMCO has considered the findings in the report, and agrees that the 500 msec delay time associated with the single pole auto re-close does not represent a security risk, and as such, withdraws its recommendation."

¹ <http://www.nemmco.com.au/marketandsystemevents/232-0026.pdf>

Issues Paper

1. Are there other technical standards that the Commission should consider as part of this review?

ElectraNet believes the current review adequately addresses the appropriate technical standards issues.

2. Is the process for establishing new performance standards effective in achieving desired outcomes for the power system. Is NEMMCO's role in the process effective or does it need to be more clearly defined?

NEMMCO's role in the process of developing generator performance standards does need to be more clearly defined.

Under the National Electricity Rules (NER), NEMMCO is responsible for the management of power system security and NSP's are responsible for power quality issues. Given these responsibilities, it is appropriate that during development of generator performance standards and negotiated access standards, NEMMCO be given a more defined role in confirming generator technical requirements contained in Schedule 5.2, which have the potential to impact on power system security.

This issue should be seen in perspective, out of the fifteen clauses contained in NER S5.2.5.1 only two clauses directly impact on power quality while the remaining thirteen clauses impact directly on system security issues, but have a lesser role in respect to power quality impacts.

In summary, as generator performance standards are based on NER Schedule 5.2 and the majority of these clauses impact directly on system security issues, NEMMCO should assume the lead role in defining the system needs with NSP's providing a supporting role. However, for clauses relating to power quality issues, NSP's should assume the principle role in defining the requirements.

3. Are performance standards for existing plant, which were defined with reference to a derogation, an accurate representation of the capability of the plant? Are there events that should trigger a review?

To the best of our knowledge the performance standards for existing plant are an accurate representation of plant capability and do not warrant a review.

4. Should there be a mechanism to modify a performance standard, either at the request of the participant or to take account of changes in the requirements on the power system?

The option exists under the connection agreements to renegotiate performance standards.

It remains untested as to how a participant could be compelled to raise its existing standards in response to changes in the power system which impact on the participant's ability to be dispatched without impacting power system security.

5. Are there any aspects of the content of the various technical standards specified in the Rules that require clarification?

ElectraNet has contributed, together with other NEM participants, in the development of revised technical standards for unscheduled generator access. These proposed rule changes have been submitted by NEMMCO.

6. Is the current framework for compliance programs effective in establishing and maintaining compliance with performance standards?

ElectraNet has supported the development of new compliance testing and reporting programs with a number of South Australian generators.

Although it is premature to advise of the effectiveness of the programs, we believe the generators are best placed to maintain compliance with their performance standards due to their detailed knowledge of their own equipment and systems and to manage the associated cost of compliance.

7. Is it reasonable to expect a participant to meet an absolute standard of compliance when this cannot be guaranteed through a compliance program?

A high level of confidence should be able to be gained from the compliance program. To achieve this compliance programs must cover all reasonable aspects of compliance and provide for periodic review and improvement as experience with the regime develops.

It is questionable whether it is appropriate to require absolute compliance where non-compliance can only be verified in the breach rather than in a compliance program. In these instances a pragmatic approach to enforcement is required and a best endeavours obligation may be more appropriate than an absolute obligation.

8. Are there sufficient incentives to ensure that all breaches of performance standards are reported to NEMMCO by participants?

It is essential that in the assessment of breaches and any associated penalties that the participant is in effect given credit for disclosing material non-compliance issues to NEMMCO willingly. Conversely a less lenient approach should be taken with those that seek to conceal issues of non-compliance or frustrate investigations.

9. Is the AER the appropriate body to monitor compliance? Is the AER's current approach to its monitoring role appropriate? To what extent should it monitor reactively or proactively? What other approaches to the monitoring role may be cost effective?

It is arguable that the AER is the appropriate body to monitor non-compliance issues if it is appropriately resourced. In the absence of technically experienced resources it may be more appropriate for NEMMCO to have a substantial role in compliance monitoring for all NEM participants including NSPs, generators and customers.

10. Should there be some form of public reporting on the outcome of the AER's monitoring role, including identifying non-compliance instances and what action has been taken to correct those non-compliances?

It is important that the monitoring role is visible and publicly accountable. This may include a requirement to periodically publish information on the conduct of investigations and material non-compliance issues.

11. Is NEMMCO's role in determining the timeframe to rectify the breach appropriate and does NEMMCO have sufficient guidance in making that determination?

NEMMCO's role in determining the timeframe to rectify a breach is appropriate.

In seeking to determine the time for rectification NEMMCO should take into account the impact of outages and/or constraints for rectification works on the market. In all cases the assessment should be weighted in favour of minimising market impact even if this disadvantages the participant.

12. Is the enforcement regime, including the powers of the AER adequate for the effective enforcement of breaches of performance standards?

The process appears effective however it has not been operational long enough to be definitive.

13. Should NEMMCO be required to inform the AER of potential noncompliance earlier than at the end of the rectification period? Should NEMMCO refer the issue to the AER in all cases, or should NEMMCO have some discretion to extend the period for compliance?

For the AER to effectively discharge its obligations it should be made aware of non-compliance issues as they arise regardless of whether the issues are expected to proceed to enforcement.

As noted in 11 above it is appropriate that NEMMCO determine the timeframe for rectification of a breach.

14. Are there other matters that the Rules should require to be taken into account in proceedings?

As noted in 8 it is essential that in the assessment of breaches and any associated penalties that the participant is in effect given credit for disclosing material non-compliance issues to NEMMCO willingly. Conversely a less lenient approach should be taken with those that seek to conceal issues of non-compliance or frustrate investigations.

15. Are there good reasons for having two investigations into power system incidents? Does this dual process assist in resolving issues by separating operational matters from enforcement matters, or does it place an inappropriate burden on participants? Do the AER and NEMMCO have appropriate power to conduct their investigations?

Typically the NEMMCO and AER reviews would be run sequentially and with different objectives. As the reviews are also infrequent and only concern significant events this does not appear unreasonable.

The separation between the NEMMCO and AER reviews is appropriate given the different areas of expertise of the two organisations

Assuming that the proposed rule change for Review of Operating Incidents is successful it would appear NEMMCO would have sufficient powers.

Due to the relatively short involvement of the AER in the process it is premature to comment on the sufficiency of the AER's powers.

16. Does the threat of enforcement action by the AER act as a disincentive to provide information to NEMMCO on a co-operative basis, if it is to be shared between the two organisations?

Information sharing between the two parties is reasonable and should not inhibit cooperation with NEMMCO provided a robust confidentiality regime is available.

17. Are the penalties for breaches of performance standards adequate?

While having no opinion on the adequacy of current penalties it must be borne in mind that increased risk and compliance costs will ultimately be borne by consumers.

18. Is there a case for determining a technical standards penalty provision which better reflects the potential costs for end users of non-compliance? If so, what should the level of that penalty be?

Exposing participants to the full market cost of non-compliance may lead to extremely high risk and/or compliance costs, which will be passed on to consumers.

20. Should NEMMCO be required to consider the commercial incentives or opportunities provided by its actions in managing the impact on power system security of a breach of performance standards?

NEMMCO should be required to consider the commercial incentives or opportunities provided by its actions in managing the impact on power system security of a breach of performance standards.

21. Is clause 5.7.3(e) sufficiently clear to allow NEMMCO to use this clause to manage a power system incident?

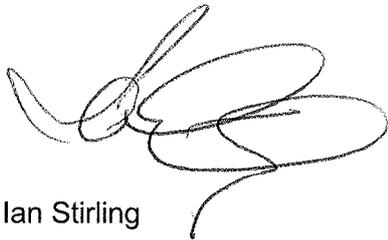
There may be scope for granting NEMMCO greater discretion in constraining potentially non-compliant generators versus applying interconnector and other constraints that may adversely affect other participants.

22. What other alternatives could be considered to address the issue of a participant gaining financially from a breach of its performance standards?

Retrospective review and adjustment of prices may be appropriate to ensure perverse incentives are wound back.

Please don't hesitate to contact Bill Jackson on (08) 8404 7969 if you would like to discuss any aspect of this submission.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Ian Stirling', written in a cursive style.

Ian Stirling
Chief Executive Officer