

Level 35, The Tower
360 Elizabeth Street
Melbourne Central
Melbourne Vic 3000

GPO Box 520
Melbourne Vic 3001

tel: (03) 9290 1444
fax: (03) 9290 1457

www.aer.gov.au

Our Ref: 57992-D15/160156
Your Ref: ERC0187
Contact Officer: Joanna Gall
Contact Phone: 08 8213 3461

23 October 2015

John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

Dear Mr Pierce

Re: Submission on National Electricity Amendment - Compliance with Dispatch Instructions (Consultation Paper)

Please find attached the Australian Energy Regulator's (AER) submission regarding the Australian Energy Market Commission's (AEMC) Compliance with dispatch instructions rule change. To assist the AEMC, we have also attached an updated draft of the AER's Compliance Bulletin - 'Compliance with dispatch instructions, offers, and bids'.

The AER would be pleased to provide further assistance to the Commission on this rule change. If you would like to discuss any aspect of this submission please contact me on (03) 9290 1465 or Joanna Gall.

Yours sincerely



Peter Adams
General Manager
Wholesale Markets
Australian Energy Regulator



AER submission

Compliance with Dispatch Instructions rule change consultation paper

October 2015

Contents

1	Summary	1
2	The current arrangements	2
	2.1. Does our discretion create unnecessary uncertainty?	3
	2.2. The effect of FCAS enablement dispatch instruction on an energy dispatch instruction	4
3	Snowy Hydro’s proposed rule	5
	3.1. AEMO’s non-conformance procedures	5
	3.2. ‘Reasonable Endeavours’ requirements.....	6
	3.3. The adequacy of financial incentives to comply.....	7
4	Alternative solutions	8

1 Summary

The AER welcomes the opportunity to comment on the AEMC's consultation paper relating to Snowy Hydro's Compliance with dispatch instructions rule change proposal.

We are opposed to Snowy Hydro's proposed amendments to the obligation to follow dispatch instructions as set out in 4.9.8(a) of the National Electricity Rules (the Rules).

Currently participants are obligated to follow dispatch instructions issued by AEMO unless to do so would, in the participant's reasonable opinion, be a hazard to public safety or materially risk damaging equipment. Furthermore, the Rules require participant offers and bids to represent the capabilities of their equipment at that time.

The requirement for participants to comply with dispatch instructions is essential to the secure operation of the power system. Any amendment which removes strict compliance would undermine the long term system security and efficiency of market dispatch.

In responding to the consultation paper, our submission has been structured in three parts.

The first part aims to address the initial questions surrounding the current 4.9.8(a) rule and the role the AER has in enforcing this obligation. We argue the current obligation for compliance with dispatch instructions is essential for system security and the efficient operation of the market in the long term. Any lesser expectation will be arbitrary and may not capture a range of conduct which is harmful to the efficient operation of the market.

We reiterate that we expect participants' compliance with 4.9.8(a). This involves a re-statement of what we have already stated publicly, including most notably during and after recent litigation involving Snowy Hydro's failure to follow dispatch instructions. In this part we also refer to the attached revised 'Compliance with Dispatch Instructions, Offers and Bids' compliance bulletin.

In the second part of the submission, we address Snowy Hydro's rule change proposal for a two limb assessment. In assessing the separate limbs of the rule proposal, we argue the rule change would firstly place an inappropriate requirement on AEMO's non-conformance procedures which would significantly alter the purpose of those procedures. Secondly, we argue that the 'reasonable endeavour' obligation is uncertain and could dilute a participant's obligation to meet dispatch instructions in certain circumstances.

In the final part, we provide a high level overview of mechanisms that may provide a financial incentive to participants to comply with instructions which could be more effective and may reduce the need for ongoing monitoring and costly enforcement action.

2 The current arrangements

The AER considers that maintaining the existing obligation for compliance with dispatch instructions is essential for system security and the efficient operation of the market in the long term. Establishing a tolerance for any lesser standard of compliance will be arbitrary and may not capture a range of conduct which is harmful to the efficient operation of the market.

In light of recent compliance and enforcement activities, we have recently reviewed our 'Compliance with Dispatch Instructions, Offers and Bids' compliance bulletin (Compliance Bulletin). A draft of the updated version is attached to our submission. We have delayed the finalisation and release of this Bulletin pending the outcome of the AEMC's Rule change process. The updated Compliance Bulletin will replace our 2006 Compliance Bulletin and summarises our approach to compliance and enforcement of clause 4.9.8.¹ In the event of a rule change, these changes will be taken into account.

In the Compliance Bulletin we outline the importance of compliance with dispatch instructions and the related requirements. The Compliance Bulletin states:

Under the Rules, AEMO is responsible for the operation and administration of the wholesale electricity market. AEMO coordinates a central dispatch process to manage the spot market, which involves matching generator offers and demand in real time. Every five minutes, AEMO issues dispatch instructions based on participants' bids and offers and system capabilities so that the quantity of electricity produced by generators will meet the demand for electricity at the lowest available cost, while maintaining the technical security of the power system.

Pricing, system security and the overall market integrity of the five minute dispatch cycle relies on market participants accurately representing their capabilities and following dispatch instructions as they are issued. If widespread, failure to follow dispatch instructions can raise system security issues, requiring AEMO to intervene. AEMO must be confident that at all times participants have accurately represented their capabilities and will follow dispatch instructions, other than in the limited circumstances allowed by the Rules. This enables AEMO to assess its security management options based on accurate information, including where necessary, issuing directions to participants. Furthermore participants then have confidence that the market price and dispatch instructions calculated by AEMO results from a process where all participants have provided accurate information to AEMO that appropriately reflects their capability.

Failure to accurately represent capability or follow dispatch instructions distorts market forecasts and outcomes and inevitably affects other registered participants in the NEM. Non-compliance with dispatch instructions can increase the requirement for frequency control ancillary services at a greater market cost. These are costs that are borne by all registered participants, and therefore ultimately by consumers. Not following dispatch instructions can, over time, also result in an increase in the safety margins used by AEMO and network service providers in determining the technical envelope in which the power system can operate, reducing its utilisation and compromising its operation.

¹ AER, Compliance Bulletin No 1 – Complying with dispatch instructions, December 2006: <http://www.aer.gov.au/node/1188>

We also consider that participants can significantly reduce their risk of non-compliance with 4.9.8(a) through achieving compliance with 4.9.8(b)-(e). Subclauses 4.9.8(b)-(e) of the Rules require that each generator, load and network service provider is at all times able to comply with the latest generation dispatch offer or bid submitted in respect of that unit, load or facility.

2.1 Does our discretion create unnecessary uncertainty?

In all areas of our compliance and enforcement work, we aim to work co-operatively with energy market participants to assist them understand their obligations under the national energy framework and to help them achieve compliance with those obligations.

As the AEMC has reflected in the consultation paper, along with continued engagement with industry, we have published two key documents which inform participants of the AER's compliance and enforcement role and approach in pursuing breaches of 4.9.8(a). Those are the Compliance Bulletin² and the more general Compliance and Enforcement Statement of Approach³ (Statement of Approach).

The attached updated Compliance Bulletin re-states our view that we expect participants' compliance with 4.9.8(a). However, as can be seen, when assessing potential non-compliance with 4.9.8(a), the AER takes into account a range of factors with a view to achieving an appropriate outcome.

As stated in our Statement of Approach, we will exercise our discretion in undertaking our compliance and enforcement activities in deciding whether to take enforcement action and the nature of that action. Whilst not exhaustive, the Statement of Approach lists the circumstances which we may consider in determining an appropriate enforcement approach.

Discretion is a key element of any enforcement agency's approach; the AER applies discretion in its enforcement and compliance activities for all energy legislation obligations, not just 4.9.8(a) of the Electricity Rules. The complexity of the market and myriad of potential circumstances means discretion by the regulator when deciding which conduct to scrutinise is the best way to address conduct which is potentially harmful to system security and the efficient operation of the market in the long term. We do not consider that the AER's ability to exercise discretion increases regulatory risk for prudent market participants.

Furthermore, we do not consider that it is possible or appropriate for the AER to list all the circumstances under which it would or would not take enforcement action, and therefore it is not possible to nominate a numeric value of deviation from energy dispatch target below which the AER will not consider enforcement action. Leaving aside potential power system security implications, the AER cannot definitively deal with every possible scenario which may eventuate. Whether a threshold for departure from an energy target is worthy of enforcement action is likely to turn on the facts in each instance.

² ibid

³ AER, Compliance and Enforcement – Statement of Approach, April 2014: <http://www.aer.gov.au/node/5876>

2.2 The effect of FCAS enablement dispatch instruction on an energy dispatch instruction

The AEMC's consultation paper asked whether participants are able to simultaneously comply with dispatch instructions for energy and frequency control ancillary services (FCAS). We do not consider that there is a conflict between achieving compliance with dispatch instructions issued to the same participant for different services, such as energy and FCAS, at the same time.

AEMO will only acquire FCAS services from a generating unit if it has classified itself as an ancillary service generating unit and submitted a market ancillary services offer. As noted in the AEMC's consultation paper AEMO will issue dispatch instructions based on FCAS providers' bids and offers. These instructions will notify the generating unit that it has been enabled for the provision of FCAS services.

The provision of an FCAS service will only prevent a unit from complying with the target output in an earlier dispatch instruction if the unit has to adjust its output to provide the relevant service at the end of the 5 minute dispatch interval. In the event that this occurs, our view is that AEMO's prior issued energy dispatch instruction would be qualified to the extent of any inconsistency resulting from a subsequent acquisition of an FCAS service pursuant to an enablement dispatch instruction.

Our view is that this interpretation is supported by the current drafting of the Electricity Rules and associated AEMO procedures and specifications⁴. It is also the approach we have applied in monitoring compliance with participants' obligations under 4.9.8(a) (that is, we take into consideration whether the relevant generating unit was providing frequency control ancillary services when assessing deviations from energy target). Nevertheless, for the sake of clarity, we are open to the AEMC reviewing the current drafting relating to ancillary services instructions to expressly address this issue in the Rules.

⁴ For example: AEMO, Power System Operating Procedure – Dispatch, July 2012; and AEMO, Market Ancillary Services Specification, May 2012

3 Snowy Hydro's proposed rule

We believe that strict compliance as is currently defined in 4.9.8(a) is the best rule available to appropriately achieve the system security and efficient market outcomes. We are yet to see an alternative rule which appropriately captures all types of conduct which is harmful to the market. Snowy Hydro's rule change proposal is not an improvement on the current approach and has a number of problems.

Snowy Hydro has proposed to replace the current strict compliance obligation with a two limb test which entails AEMO's non-conformance procedure and a conduct assessment. Snowy Hydro's rule change is predominantly concerned about compliance with energy targets. As discussed in the consultation paper, dispatch instructions are those set out in clauses 4.9.2, 4.9.2A, 4.9.3 and 4.9.3A, which incorporate instructions as to energy output, load reduction, ancillary services provision and certain plant settings. Should the AEMC consider amendments to 4.9.8(a) are required, these amendments will require detailed consideration of how the changes will apply to the different types of dispatch instructions. Our views on the specific aspects of Snowy Hydro's proposal are set out below.

3.1 AEMO's non-conformance procedures

Chapter 3 of the Rules describes the procedures which govern the operation of the market relating to the wholesale trading of electricity and the provision of ancillary services. Rule 3.8 was designed with a particular purpose in mind, namely to deal with spot market operation. In particular, clause 3.8.23 places obligations on AEMO to act to ensure it can realign pricing and dispatch outcomes within a tolerable time and accuracy. Clause 3.8.23 should not be read to mean that participants may regularly or lawfully fail to comply with a dispatch instruction that may adversely affect other participants or system security.

AEMO has developed and amends, from time to time, procedures for managing failure to conform to dispatch instructions under clause 3.8.23 of the Rules. AEMO has established these procedures within the context of the current regulatory framework. These procedures are primarily designed to overcome short term effects in the market as it relates to spot price, not on system security. In the event that additional compliance and enforcement objectives are to be considered, we expect AEMO's non-conformance procedures would require significant amendment to reflect these additional market considerations. To put it differently, AEMO would need to make an assessment about what conduct should be captured under 4.9.8(a) and potentially recraft the procedure such that special consideration is given to following a dispatch instruction concerned with an energy target as distinct from any other dispatch instruction.

This raises two concerns. Firstly we do not consider it is appropriate for AEMO as the market operator to be responsible for determining the threshold for acceptable non-compliance with a range of dispatch instructions. An attempt to prescribe a set of thresholds or circumstances that amount to a breach of dispatch instructions would be arbitrary and may inadvertently exclude harmful conduct. The obligations on participants should be clearly articulated in the Rules rather than in AEMO procedures, particularly given this is such a critical provision for the safe and efficient operation of the NEM. We consider the AEMC is best placed to

determine how the obligation around dispatch instructions is framed and that the AER is best placed to determine what non-compliance to pursue.

Secondly we consider it will be difficult for AEMO to determine a procedure that will adequately capture conduct which may raise compliance and enforcement concerns whilst simultaneously satisfying its obligations under 3.8.23. Under 3.8.23, AEMO has to specify a threshold in terms of both time and accuracy. This would have to apply to energy targets, delivery of FCAS and other types of dispatch instructions. The AER considers that the specification of a MW threshold, amongst other things, would have system security implications. Given this, we consider it would be likely AEMO would tighten the current thresholds beyond what would otherwise be considered reasonable for short term market efficiency purposes (as it relates to spot price). This would increase the costs on AEMO and market participants to achieve compliance with 3.8.23.

3.2 ‘Reasonable Endeavours’ requirements

We consider a “reasonable endeavours” obligation potentially reduces a participant’s obligation to meet dispatch instructions in certain circumstances.

Reasonable endeavours may encompass a very wide range of considerations, including personal safety, cost to future reliability, contract position or physical damage, and other considerations which we are unable to predict at this time. Regardless, a provision which may potentially excuse non-compliance with dispatch instructions due to commercial considerations, such as “unnecessary” wear and tear, would significantly undermine the integrity of the rule. This would effectively place the commercial success of the participant ahead of market efficiency and long term market security.

We consider that clause 4.9.8(a), as currently drafted, provides sufficient certainty to market participants in relation to their obligation to comply with dispatch instructions. The AER considers that the reasonable endeavours test, proposed by Snowy Hydro, would significantly undermine that certainty. The consultation paper concludes that a ‘reasonable endeavours’ obligation will likely involve an assessment by a person of what conduct is reasonable in the circumstances. The AER agrees with this conclusion. In deciding whether to take action for any failure to follow dispatch instructions, the AER will need to investigate a wide range of matters before it will be in a position to form a view as to whether a participant had reasonably endeavoured to comply with those dispatch instructions. The scope of conduct which may constitute reasonable endeavours is uncertain. Should the AER decide to litigate a matter it would obtain some judicial guidance as to the scope of such an obligation. However, each matter is likely to be highly case specific. Therefore, even if a Court provides guidance in relation to a particular set of circumstances, its decision is unlikely to be instructive as to future matters or for all situations.

A reasonable endeavours approach would require the AER to take an even broader approach in assessing the context which led to the purported breach. As already stated, the AER considers that there is no uncertainty in the application of the rule, but even if there were, the proposed amendment would not solve the problem. We consider that a “reasonable endeavours” test increases the factors that need to be taken into consideration and assessed by the AER, thereby raising the cost of monitoring compliance and investigating breaches both for the AER and for market participants (including AEMO).

3.3 The adequacy of financial incentives to comply

The AEMC's consultation paper has raised questions regarding the financial incentives to comply with dispatch instructions provided by the FCAS cost recovery process. Our view is that should the AEMC make the proposed rule, there will be insufficient financial incentives in place to ensure participants comply as precisely as possible. We do not consider FCAS causer pays or the exclusion of a generator as the price setter acts as a strong incentive to comply with energy dispatch instructions.

FCAS causer pays only acts as a financial incentive regarding compliance with energy dispatch instructions. We do not consider the cost of FCAS causer pays outweighs the benefit of not following energy targets for a range of factors including:

- generally the cost of regulation ancillary services is far outweighed by the value of energy
- a deviation from target will only be captured if the deviation adversely contributed to the frequency excursion, and
- participants' causer pays contributions are calculated on a portfolio basis rather than an individual unit basis.

More fundamentally generators participating in the FCAS market are also not included in the existing AEMO non-conformance procedures.

The other financial incentives offered by the market arrangements, such as the existing non-conformance arrangements are also relatively weak. We do not consider the inability of a unit to set the spot price when deemed non-conforming acts as a strong disincentive particularly as their deviation also impacts the financial position of other participants. For example, constrained units are also unable to set the spot price – we have previously observed that some generators will engage in strategic bidding to cause constraints to bind and achieve price outcomes, notwithstanding that their constrained units cannot set price.⁵

⁵ See AER, *Special report - The impact of congestion on bidding and inter-regional trade in the NEM*, December 2012, <https://www.aer.gov.au/wholesale-markets/market-performance/special-report-the-impact-of-congestion-on-bidding-and-inter-regional-trade-in-the-nem>

4 Alternative solutions

Clause 4.9.8(a) provides the market with a standard of expected behaviour and it then relies on the AER to enforce compliance. The Rules and settlement procedures do not effectively encourage compliance except by risk of enforcement action. We would support the AEMC giving further consideration to alternative solutions that may encourage compliance. In our view, a mechanism that provides a strong financial incentive to comply with instructions could be more effective and may reduce the need for ongoing monitoring and costly enforcement action.

While we do not have firm views at this stage, nor have we undertaken any detailed analysis, the AER considers that there are a number of potential options that may be worthy of further consideration. AEMO's non-conformance procedures currently recognise that when a generator is away from its target for an extended period of time that the targets for other generators have to be adjusted to accommodate that deviation. There is not however any immediate market based financial disincentive or even compensation or correction to the adversely affected parties. Changes to the settlement procedures could create a mechanism by which the generators not meeting their targets could compensate those adjusted away from theirs as a result. In recognition of the reduced market and allocative efficiency that occurs when generators don't meet their targets, the compensation approach could be extended to recover additional market costs incurred by AEMO for increased FCAS services or other charges.

Currently the settlement procedure pays generators for the metered energy that they produce independent of whether the participant followed their dispatch instructions or not. The settlement procedure could be amended such that generators are paid in accordance with their targets, consistent with the method by which price is determined. Alternatively the settlement procedure could set out that generators are paid in accordance with the lower of their target or actual generation for prices greater than zero and the higher of their target or actual for prices less than zero or equal. This would provide a substantial financial incentive for participants to meet their targets, reducing the regulatory burden and strengthening the importance of 4.9.8(a) as a system security provision by separating potential financial gains and market inefficiencies from the potential drivers of non-compliance. Pricing and dispatch would be more closely aligned with generators' behaviour, reducing the reliance of AEMO's non-conformance processes to achieve the outcomes of clause 3.8.23.



DRAFT

**Compliance with
dispatch instructions,
offers and bids**

Compliance Bulletin No. 1

October 2015

© Commonwealth of Australia 2015

This work is copyright. In addition to any use permitted under the Copyright Act 1968, all material contained within this work is provided under a Creative Commons Attributions 3.0 Australia licence, with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration, diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright, but which may be part of or contained within this publication. The details of the relevant licence conditions are available on the Creative Commons website, as is the full legal code for the CC BY 3.0 AU licence.

Requests and inquiries concerning reproduction and rights should be addressed to the Director, Corporate Communications,
Australian Competition and Consumer Commission,
GPO Box 4141,
Canberra ACT 2601
or publishing.unit@acc.gov.au.

Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 520
Melbourne Vic 3001

Tel: (03) 9290 1444
Fax: (03) 9290 1457

Email: AERInquiry@aer.gov.au
AER Reference: 57992:D15/116319

Amendment Record

Version	Date	Pages
2.0	October 2015	8
1.0	December 2006	3

Shortened forms

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Law	National Electricity Law
NEM	National Electricity Market
Relevant participant	Scheduled Generator, Semi-Scheduled Generator and/or a Market Participant operating in the NEM.
Rules	National Electricity Rules
Statement of Approach	AER Enforcement and Compliance — Statement of Approach

1 Purpose of this compliance bulletin

The Australian Energy Regulator (AER) aims to work co-operatively with National Electricity Market (NEM) participants to help them understand their obligations under the national energy framework and to help them achieve compliance with those obligations. The purpose of this compliance bulletin is to inform market participants of our broad interpretation and enforcement approach when monitoring and enforcing compliance with the National Electricity Rules (Rules) regarding following dispatch instructions issued by the Australian Energy Market Operator (AEMO).

This compliance bulletin is intended to replace our 2006 compliance bulletin and summarise our approach to compliance and enforcement of clause 4.9.8.¹

Our 2006 compliance bulletin was published in response to market events on 31 October 2005 and focused on the relationship between clauses 4.9.8(a) and 3.8.23 of the Rules. This compliance bulletin has a broader focus and captures our approach to the enforcement of subclauses 4.9.8(a)-(e). It also incorporates the outcomes of a recent Federal Court decision related to this provision.² We believe there is value in clarifying our approach to monitoring compliance with, and enforcement of, these provisions to provide greater certainty and predictability for market participants and reduce compliance costs.

2 Regulatory framework

This section describes the roles and functions of the AER and summarises the provisions of the Rules that are relevant to this compliance bulletin.

2.1 Role and functions of the AER

The AER has functions and powers which include³:

- Monitoring compliance with the National Electricity Law (Law) and the Rules.
- Investigating breaches or possible breaches of the Law and the Rules.
- Instituting and conducting proceedings in relation to breaches and appeals from decisions in those proceedings.

In exercising these functions and powers, we work to ensure that:

- Our approach is consistent over time.
- Our processes are cost effective for participants and the AER.
- Our activities are transparent.

¹ <http://www.aer.gov.au/node/1188>

² *Australian Energy Regulator v Snowy Hydro Ltd (No 2)* [2015] FCA 58 (AER v Snowy Hydro)

³ The AER's functions and powers are outlined in Part 3, Section 15 of the National Electricity Law.

The AER has detailed its methods for compliance and enforcement in the AER *Enforcement and Compliance — Statement of Approach* (Statement of Approach) available on the AER website.⁴

2.2 Relevant Rules

Clause 4.9.8 of the Rules outlines the general responsibilities of all registered participants concerning the requirement

- to follow dispatch instructions, and
- to submit offers or bids that generators, loads and scheduled network service providers are able to comply with at all times.

Dispatch instructions in this context are those set out in clauses 4.9.2, 4.9.2A, 4.9.3 and 4.9.3A, which incorporate instructions as to energy output, load reduction, ancillary services provision and certain plant settings.

All subclauses within clause 4.9.8 of the Rules are civil penalty provisions which provide us with the authority to issue an infringement notice carrying an infringement penalty of \$20,000 for each breach by a body corporate.⁵

The AER's enforcement tools also include the ability to accept administrative or enforceable undertakings and commence proceedings in the Federal Court in order to seek civil penalties and declarations in relation to the impugned conduct. The maximum penalty that can be awarded by a court for each breach of a civil penalty provision, including those in clause 4.9.8(a) of the Rules is \$100,000.

2.2.1 Clause 4.9.8

Clause 4.9.8 of the Rules states:

- (a) A *Registered Participant* must comply with a *dispatch instruction* given to it by AEMO unless to do so would, in the *Registered Participant's* reasonable opinion, be a hazard to public safety or materially risk damaging equipment.
- (b) A *Scheduled Generator* must ensure that each of its *scheduled generating units* is at all times able to comply with the latest *generation dispatch offer* under Chapter 3 in respect of that *generating unit*.
- (b1) A *Scheduled Network Service Provider* must ensure that each of its *scheduled network services* is at all times able to comply with the latest *network dispatch offer* under Chapter 3 in respect of that *market network service*.
- (c) A *Registered Participant* must ensure that each of its *facilities* is at all times able to comply with any relevant *dispatch bid* under Chapter 3 in respect of the *facility* (as adjusted by any subsequent restatement of that bid under Chapter 3).

⁴ AER, Compliance and Enforcement – Statement of Approach, April 2014: <http://www.aer.gov.au/node/5876>.

⁵ Section 76 of the National Electricity Law sets out the infringement penalty for a breach of a civil penalty provision is \$4000 for a natural person or \$20 000 for a body corporate.

- (d) A *Market Participant* which has classified a *generating unit* or *load* as an *ancillary service generating unit* or an *ancillary service load*, as the case may be, must ensure that the *ancillary service generating unit* or *ancillary service load* is at all times able to comply with the latest *market ancillary service offer* for the relevant trading interval.
- (e) A *Semi-Scheduled Generator* must ensure that each of its *semi-scheduled generating units* is at all times able to comply with its latest *generation dispatch offer*.

2.2.2 Clause 3.8.23

Clause 3.8.23 of the Rules states:

- (a) If a *scheduled generating unit*, *scheduled network service* or *scheduled load* fails to respond to a *dispatch instruction* within a tolerable time and accuracy (as determined in AEMO's reasonable opinion), then the *scheduled generating unit*, *scheduled network service* or *scheduled load* (as the case may be):
 - (1) is to be declared and identified as non-conforming; and
 - (2) cannot be used as the basis for setting *spot prices*.
- ...
- (e) If a *generating unit*, *scheduled network service* or *scheduled load* (as the case may be) continues to be non-conforming under this clause 3.8.23 after a reasonable period of time, AEMO must prepare a report setting out the details of the non-conformance and forward a copy of the report to the *Scheduled Generator*, *Semi-Scheduled Generator*, *Scheduled Network Service Provider* or *Market Customer* (as the case may be) and the AER.

2.3 The importance of compliance

In the Snowy Hydro judgement, his Honour Justice Beach stated at paragraph 19:⁶

..... Cl 4.9.8(a) of the Rules required that a registered participant must comply with a dispatch instruction given to it by AEMO unless to do so would, in the registered participants reasonable opinion, be a hazard to public safety or materially risk damaging equipment. Compliance with dispatch instructions is necessary to ensure the power system remains secure. AEMO relies upon conformance with dispatch instructions to ensure it can effectively perform its functions as both power system operator and market operator for the NEM”.

Chapter 4 of the Rules provides the framework for achieving and maintaining a secure power system. The requirement for participants to comply with dispatch instructions, as specified in Chapter 4 of the Rules, is essential to the secure operation of the power system. Participants are obligated to follow dispatch instructions issued by AEMO unless to do so would, in the participant's reasonable opinion, be a hazard to public safety or materially risk damaging equipment. Furthermore, the Rules require participant offers and bids to represent the capabilities of their equipment at that time.

⁶ Australian Energy Regulator v Snowy Hydro Limited (No.2) [2015] FCA 58

Under the Rules, AEMO is responsible for the operation and administration of the wholesale electricity market. AEMO coordinates a central dispatch process to manage the spot market, which involves matching generator offers and demand in real time. Every five minutes, AEMO issues dispatch instructions based on participants' bids and offers and system capabilities so that the quantity of electricity produced by generators will meet the demand for electricity at the lowest available cost, while maintaining the technical security of the power system.

Pricing, system security and the overall market integrity of the five minute dispatch cycle relies on market participants accurately representing their capabilities and following dispatch instructions as they are issued. If widespread, failure to follow dispatch instructions can raise system security issues, requiring AEMO to intervene. AEMO must be confident that at all times participants have accurately represented their capabilities and will follow dispatch instructions, other than in the limited circumstances allowed by the Rules. This enables AEMO to assess its security management options based on accurate information, including where necessary, issuing directions to participants. Furthermore participants then have confidence that the market price and dispatch instructions calculated by AEMO result from a process where all participants have provided accurate information to AEMO that appropriately reflects their capability.

Failure to accurately represent capability or follow dispatch instructions distorts market forecasts and outcomes and inevitably affects other registered participants in the NEM. Non-compliance with dispatch instructions can increase the requirement for frequency control ancillary services at a greater market cost. These are costs that are borne by all registered participants, and therefore ultimately by consumers. Not following dispatch instructions can, over time, also result in an increase in the safety margins used by AEMO and network service providers in determining the technical envelope in which the power system can operate, reducing its utilisation and compromising its operation.

2.4 The relationship between clauses 4.9.8(a) and 3.8.23

Chapter 4 of the Rules describes the obligations of participants that operate in the NEM. As outlined above, clause 4.9.8(a) describes the requirement for registered participants to comply with dispatch instructions, as this is fundamental to the secure operation of the power system.

Chapter 3 of the Rules describes the procedures which govern the operation of the market relating to the wholesale trading of electricity and the provision of ancillary services. Rule 3.8 covers spot market operation and clause 3.8.23 places obligations on AEMO to act to ensure it can realign pricing and dispatch outcomes within a tolerable time and accuracy. AEMO has developed and amends, from time to time, procedures for managing failure to conform to dispatch instructions under of the Rules.

Some industry participants are under the misapprehension that clause 4.9.8(a) is automatically satisfied unless they are flagged as non-conforming by AEMO under clause 3.8.23. This is incorrect. The obligation placed on registered participants under clause 4.9.8(a) is a separate and distinct obligation. However, we note that compliance with clause 4.9.8(a) means, by implication, that a market participant cannot be non-conforming under clause 3.8.23.

3 Our compliance and enforcement approach

This section sets out our approach to compliance and enforcement of clause 4.9.8. Whilst this compliance bulletin is primarily aimed at compliance with dispatch instructions and/or offers for energy, it is equally applicable to other types of dispatch instructions.

We do not consider that there is a conflict between achieving compliance with dispatch instructions issued to the same participant for different services, such as energy and frequency control ancillary services (FCAS).

AEMO will only acquire FCAS services from a scheduled generating unit if the scheduled generator has classified one or more of its generating units as an ancillary service generating unit and submitted a market ancillary services offer. AEMO will issue dispatch instructions based on FCAS providers' offers. These instructions will notify a scheduled generator if the generating unit has been enabled for the provision of FCAS during the dispatch interval.

It is possible that the provision of an FCAS service will require a unit to adjust its output at the end of the five minute dispatch interval away from the target output specified in an earlier dispatch instruction. In these circumstances, the prior issued energy dispatch instruction would be qualified to the extent of any inconsistency resulting from a subsequent provision of FCAS (pursuant to the FCAS enablement dispatch instruction).

When assessing compliance with 4.9.8(a), the AER is cognisant of the different types of dispatch instructions issued to market participants (that is, we take into consideration whether the relevant generating unit was providing FCAS when assessing deviations from energy target).

3.1 Subclauses 4.9.8(a)-(e)

AEMO issues dispatch instructions for energy based on a registered participant's offer (including ramp rates) amongst other information. Other dispatch instructions may also be made by AEMO regarding FCAS and changes to plant configuration. The dispatch instructions issued to each generator, load or network service provider are based on their offers or bids. The subclauses of clause 4.9.8 are designed to work together: subclauses 4.9.8(b)-(e) require a participant to provide an offer with which it can comply, thereby promoting compliance with subclause 4.9.8(a).

Subclauses 4.9.8(a)-(e) are separate and distinct obligations which are separately enforceable. For example, a scheduled generator that is at all times able to comply with its latest offer but does not follow a dispatch instruction, where there is no hazard to public safety or a material risk of equipment damage, may satisfy clause 4.9.8(b) but breach clause 4.9.8(a).

Conversely, a scheduled generator that fails to comply with a dispatch instruction because to do so would, in the scheduled generator's reasonable opinion, be a hazard to public safety or materially risk damaging equipment, may be compliant with clause 4.9.8(a). However, despite the existence of a hazard to public safety or a material risk of damaging equipment,

if that scheduled unit was incapable of complying with its latest offer in any case, the scheduled generator may be in breach of clause 4.9.8(b).

3.2 Complying with the current dispatch instruction

Attempts to manage a generating unit's ability to comply with an expected dispatch instruction for a future dispatch interval do not relieve a registered participant of its obligation to comply with a current dispatch instruction issued by AEMO.

The Federal Court accepted the proposition that a generating unit's ability to comply with an expected dispatch instruction for a future dispatch interval could not (of itself and without more) lawfully excuse a failure to comply with a dispatch instruction.⁷ For example, where a registered participant is aware that a unit is deviating from dispatch instructions, immediate steps should be taken to comply. The possibility that such steps may result in future dispatch instructions that require a rapid shut-down and start-up cycle is irrelevant.

In the AER's view, wear and tear on a plant as a result of its operation does not amount to "materially risk damaging equipment" for the purposes of clause 4.9.8(a).⁸ Participants have the ability to limit their exposure to rapid shut-down and start-up cycles through the structure of dispatch offers and by rebidding and should be cognisant of the application of 4.9.8(b) in this regard.

3.3 Compliance with latest generation dispatch offer

Subclauses 4.9.8(b)-(e) of the Rules require that each generator, load and network service provider is at all times able to comply with the latest dispatch offer or bid submitted in respect of that unit, load or facility. There are no qualifications in the application of these subclauses. Given that the NEM operates on a 5-minute basis, the offer of each generator, load or network service provider must be monitored and varied as required to ensure it always complies with the capability of that unit, load or facility as conditions change, and that it rebids where necessary.

AEMO's dispatch engine issues dispatch instructions in accordance with the latest offer or bid submitted in respect of a generator, load or network service provider. An offer or bid must not be submitted in respect of a generator, load or network service provider that cannot be complied with due to the technical and physical limitations of the unit. If the physical or technical limitations of a unit, load or facility change as a result of a change in conditions, the participant should rebid to avoid its latest offer resulting in a dispatch instruction that the unit, load or facility is unable to follow.

⁷ AER v Snowy Hydro. For example, see paragraphs 24 and 171.

⁸ The Federal Court also accepted this view on the factual basis that arose within AER v Snowy Hydro. See paragraphs 65-67, 72-74, 77-79 and 84-90.