



Quarterly Compliance Report

July - September 2009

October 2009

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Glossary

ACCC	Australian Competition & Consumer Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator (see www.aer.gov.au)
Bulletin Board	The Natural Gas Services Bulletin Board established under Chapter 7 of the Gas Law
Electricity Law	National Electricity Law (a Schedule to the National Electricity Act)
Electricity Regulations	The National Electricity (South Australia) Regulations made under the National Electricity Act
Electricity Rules	The National Electricity Rules made under Part 7 of the Electricity Law
Gas Law	National Gas Law (a Schedule to the National Gas Act)
Gas Regulations	The National Gas (South Australia) Regulations made under the National Gas Act
Gas Rules	The National Gas Rules made under Part 9 of the Gas Law
LNG	Liquefied Natural Gas
MOU	Memorandum of Understanding
MSOR	The Victorian Gas Industry Market and System Operations Rules made under the <i>Gas Industry Act 1994</i> (Victoria)
MW	Megawatt
NEM	The National Electricity Market being the electricity wholesale exchange operated and administered by AEMO, and the national electricity system, which covers the following regions as at 1 July 2009: Queensland, New South Wales, Victoria, South Australia, and

	Tasmania
NEMMCO	National Electricity Market Management Company, replaced by AEMO on 1 July 2009
NSP	Network Service Provider
registered participants	A person who is registered by AEMO in any one or more of the categories listed in clauses 2.2 to 2.7 of the Electricity Rules (see AEMO's Registration and Exemption lists)
TNSP	Transmission Network Service Provider

Executive Summary

This report outlines the compliance monitoring and enforcement activities of the Australian Energy Regulator (AER) in the September 2009 quarter (1 July 2009 to 30 September 2009). The AER has compliance monitoring and enforcement roles in both gas and electricity.

In gas, the AER monitors, investigates and enforces compliance with the National Gas Law (Gas Law) and National Gas Rules (Gas Rules).¹ In the September 2009 quarter three areas of compliance were noted, with participant bidding behaviour at the Iona injection point, Origin's bidding and injections at Bass Gas and counter-acting bids at VicHub all being scrutinised. Provisions targeted for compliance reviews in the quarter covered forecasting and the appointment of allocation agents. The AER is continuing its focus on the Bulletin Board, with several participants being identified as having not provided forecast and actual data in accordance with the Bulletin Board procedures.

In electricity, the AER monitors, investigates and enforces compliance with the National Electricity Law (Electricity Law) and the National Electricity Rules (Electricity Rules).

In the September quarter, the AER completed an investigation into the bidding of 2 generators by Babcock and Brown Power, in respect of the obligations under Electricity Rules 4.9.8(a) and 4.9.9. The AER issued infringement notices in respect of the alleged conduct.

Other electricity compliance activities in the September quarter included:

- reviewing the quality of 20 reasons offered by participants in their rebids

¹ Until 30 June 2009 it also assisted the Australian Competition & Consumer Commission (ACCC) in enforcing the Victorian Gas Industry Market and System Operations Rules (MSOR). From 1 July 2009, that function was transferred to the AER under the Gas Law and Gas Rules for declared wholesale gas markets. At this time, Victoria is the only jurisdiction with a declared wholesale market under the Gas Rules.

- a review of Diamond Energy's compliance with the final settlement requirements of the Electricity Rules
- monitoring jurisdictional derogations that apply to smelter traders, power traders and nominated generators in the National Electricity Market (NEM). No instances of non-compliance were reported.

Additionally, the AER conducted targeted compliance reviews of five Electricity Rule provisions. These provisions covered AEMO's obligations in respect of financial management of the NEM, transmission network service provider (TNSP) obligations in relation to testing of generation connected to the network and retailer compliance with the confidentiality obligations under the Electricity Rules.

Finally, the AER is currently involved in the auditing of two registered participants in respect of compliance with technical standards. One audit is of a generation business and focuses on compliance with the generator performance standards. The other audit is of a TNSP and will focus on compliance with clause 5.7.4(a1) of the Electricity Rules. These audits are part of a continuing process and over time will involve all major generators and transmission businesses.

1 Introduction

The AER is responsible for compliance monitoring, reporting and enforcement under certain legislation and rules governing Australia's energy industries. It acquired regulatory oversight of the National Electricity Market (NEM) on 1 July 2005 and parts of the natural gas industry on 1 July 2008. Section 15 of the Electricity Law and section 27 of the Gas Law set out the functions and powers of the AER which include a requirement to:

- (a) monitor compliance by energy industry participants and other persons
- (b) investigate breaches or possible breaches of provisions of the legislative instruments under the AER's jurisdiction.

In carrying out its compliance monitoring and enforcement role, the AER aims to promote high levels of compliance.

This report provides an overview of our approach to compliance monitoring and a summary of compliance outcomes and enforcement activity in the September 2009 quarter.

We welcome any comments and feedback from energy industry participants and other interested parties on any matters of compliance, including the specific areas targeted or proposed to be targeted for review.

2 Compliance monitoring and enforcement strategy

The AER's compliance monitoring and enforcement strategy aims to build a culture of corporate compliance within the Australian energy industry.

Industry participants with sound compliance cultures reduce their risk of breaching regulatory obligations. A sound compliance program may also lead to lower penalties in the event that a breach occurs. Further, a culture of market compliance helps all industry participants engage confidently in commercial decisions and negotiations.

In June 2009, the AER issued a revised *Compliance and Enforcement – Statement of Approach*² covering electricity and gas, which aims to enhance transparency about our compliance monitoring and enforcement strategy.

The AER has completed a comprehensive compliance risk assessment of the Electricity Rules and Gas Rules. The risk assessment helped the AER identify:

- areas of focus
- the appropriate monitoring mechanism for each provision
- the intensity of monitoring
- the appropriate ways to encourage compliance.

Our methods of compliance monitoring include audits, targeted compliance reviews, market monitoring, and imposing reporting requirements. In carrying out our monitoring functions, we aim for:

- consistency in monitoring over time
- cost effective monitoring for energy industry participants and the AER
- transparency, with information generally published subject to any confidentiality requirements.

In our targeted compliance reviews, provisions are selected for review based on the

² See <http://www.aer.gov.au/content/index.phtml/itemId/685897/fromItemId/656069>.

following principles:

- provisions with relatively high compliance risk are targeted as a matter of priority
- both systemic issues and those with the potential for isolated but significant impact are addressed
- there is no unnecessary discrimination between registered participants.

The targeted compliance reviews aim to determine:

- registered participants' understanding of their obligations under the relevant rules
- what systems and processes, including compliance programs and plans, registered participants have in place to deal with their obligations.

While the majority of obligations under the Electricity and Gas Rules do not require registered participants to establish specific compliance programs, the AER takes into account a participant's compliance culture in determining its enforcement response to breaches. In assessing a participant's compliance culture, the AER has regard to whether the participant's systems and processes are effective, up-to-date and tested regularly.

3 Gas

The AER is responsible for monitoring, investigating and enforcing compliance with the Gas Law and Gas Rules. Part 3 of this report outlines the AER's activity in gas in the September 2009 quarter. **Appendix A** provides a list of investigations/enquiries over the last four quarters, including ongoing matters.

3.1 Update on investigations, enquiries and compliance issues

3.1.1 Participant bidding behaviour at Iona on 21 November 2008

The AER has completed its enquiry into the gas bids and rebids of various market participants at the Iona injection point for the 21 November 2008 gas day, when planned maintenance resulted in no gas availability. The AER wrote to various participants to enquire about the nature of their bids and whether the bids complied with clause 3.1.10 of the Victorian Market and Systems Operations Rules (MSOR), which was in effect at the time (now clause 213(2) of the Gas Rules). Under this clause, a market participant must ensure that injection and withdrawal bids are made in good faith and represent its best estimate of the quantities of gas it expects to inject or withdraw from the transmission system, should the market operator schedule that gas.

The AER received written responses from the relevant participants and held discussions with them to better understand the reasons behind their bids at the Iona injection point—which had zero injection and withdrawal capacity on that gas day. Following its review of the responses, the AER considered that various bids made by participants were inconsistent with clause 3.1.10. However, the AER considered it appropriate that in this instance, no further action be taken.

In reaching this view, the AER considers that if a market participant is aware in advance of a zero flow capacity at an injection/withdrawal point, then making a bid to inject or withdraw gas from that point is in breach of clause 213(2) of the Gas Rules.

3.1.2 Bidding at Bass Gas on 11 June

The AER has examined inconsistencies between the amount of gas bid by Origin Energy at the Bass Gas injection point and that scheduled by VENCORP (now Australian Energy Market Operator (AEMO)) on the 11 June 2009 gas day. The enquiries related to compliance with clauses 3.1.10(f)(1) of the Victorian MSOR (now clause 213(2)(b) of the Gas Rules). The clause requires a market participant's injection bids to be consistent with its best estimates of expected injection quantities if scheduled by AEMO, and also requires these bids to be made in good faith.

The AER understands that, prior to submitting its bids on 11 June, Origin Energy did not seek updated information from Bass Gas regarding the expected quantity of gas production for that gas day. The AER received written correspondence and held discussions with Origin Energy to further understand its bids submitted on 11 June. The AER considers that because the Origin Energy's injection bids did not reflect its producer's forecast production volumes, it should have promptly adjusted its bids to match forecast Bass Gas production (injection) volumes. Particularly given its direct relationship with Bass Gas, Origin Energy should have sought the latest production information from its producer prior to submitting its final injection bids at Bass Gas.

While the AER will take no further action in this instance, it will continue to monitor Origin Energy's injection and withdrawal bids to ensure these are consistent with the requirements of the Gas Rules.

3.1.3 Counter-acting injection and withdrawal bids at VicHub in July

The AER is examining several injection and withdrawal bids submitted in July 2009 at the VicHub bi-directional system injection/withdrawal point. The nominations involved two market participants submitting 'counter-acting' injection and withdrawal bids of equal quantities.

The AER wrote to the market participants to ascertain whether the bids complied with clause 213(2)(b) and 213(2)(c) of the Gas Rules. A later quarterly compliance report will set out the results of this compliance query.

3.1.4 Current Bulletin Board issues

The AER monitors the quality and consistency of information posted on the gas Bulletin Board on an ongoing basis.³ The AER also receives regular compliance reports from AEMO, the Bulletin Board operator, indicating whether the data has been provided in accordance with obligations under the Gas Rules and the Bulletin Board procedures.

In July 2009, the AER began publishing a weekly summary of the information submitted to AEMO as the Bulletin Board operator. The weekly reports show trends in gas production and pipeline flows into demand regions across the national gas market. The reports are available on the AER's website.⁴ The reports also highlight failures to submit information by participants.

The following participants failed to provide actual and forecast data, in accordance with the Bulletin Board provisions in the Gas Rules, during the September 2009 quarter.

- Tas Gas Networks (BBI TGP Pty Ltd) did not provide actual daily flow data for the Tasmanian Gas Pipeline on various days during July and August
- Jemena VicHub Pipeline Pty Ltd did not provide forecast and firm nomination flow data for the Eastern Gas Pipeline and Queensland Gas Pipeline on various days during July
- APA Group did not provide firm nomination flow data for the Carpentaria, Roma to Brisbane, and Moomba to Sydney pipelines on various days during the quarter.

The obligations to provide and update information on the Bulletin Board aim to ensure accurate and transparent information is available to all interested parties and to facilitate trade in Australian gas markets. The submission of accurate data, in accordance with obligations, is vital in achieving this objective. The AER will continue to focus on compliance with the Bulletin Board provisions.

³ The role of operating the National Gas Market Bulletin Board (Bulletin Board) was transferred from VENCORP to the AEMO on 1 July 2009. The enabling legislation for the Bulletin Board is found in chapter 7 of the Gas Law and part 18 of the Gas Rules. The associated Bulletin Board procedures can be found on the Bulletin Board website.

⁴ See: <http://www.aer.gov.au/content/index.phtml/itemId/729309>

3.1.5 Significant price events

The AER became responsible for monitoring the Victorian Declared Wholesale Gas Market on 1 July 2009. As part of this monitoring role, the AER is required to identify significant price variations and publish guidelines as to what constitutes a significant price variation. Prior to 1 July 2009, VENCORP (now AEMO) undertook this role.

The AER publishes Gas Weekly Reports, which include analysis of price movements in the Market. On four days in September, daily prices exceeded the price threshold used by VENCORP but were still less than \$4/GJ due to a period of sustained low prices throughout August and September.

The AER is currently developing its own guidelines for reporting on significant price variations.

3.2 Gas targeted compliance reviews

Targeted compliance reviews form an important part of the AER's ongoing compliance monitoring program. At the beginning of 2009, the AER began targeted compliance reviews of particular provisions of the Gas Rules. The reviews explore participants' compliance practice and aim to improve stakeholder understanding of the Gas Rules. The AER publishes the results of the reviews in these quarterly compliance reports.

In the September 2009 quarter, the AER targeted the following provisions of Part 18 of the Gas Rules:

Table 1: Gas Rules provisions targeted for review – September 2009 quarter

Rule	Relevant parties (subject to current review)	Obligation	No. of targeted participants
211	Registered Participants	Timing of submissions and demand forecasting	4
229	Registered Participants	Appointment of a single allocation agent or a single sub-allocation agent	3

3.2.1 Timing of submissions and demand forecasting

The AER has selected Gas Rules clause 211 for review due to a number of compliance issues. In recent months:

- a different Gas Rules requirement came into effect on 1 July 2009, with revised obligations pertaining to the timing requirements for submitting demand forecasts
- there has been significant error in demand forecasting
- AEMO has regularly needed to override forecasts for system security reasons.

The review focussed on participants' compliance processes with clause 211, which aims to ensure demand forecasts are based on best estimates of expected gas withdrawal quantities.

The AER sought information from AGL, Red Energy, Simply Energy and TRUenergy.

Response summary

One response noted that an over-arching principle adopted when translating the MSOR into the National Gas Rules was that the process was intended to be one of minimal change and suggested that the demand forecasting requirements in clause 211 remain substantially similar to those in the MSOR. The AER discussed these issues with the market participant. The AER notes that the documents circulated during the rule drafting process state that the rule was amended to require further demand forecast submissions at later times if there are changes to previously submitted information. The AER considers that market participants who submit sets of forecasts at a single point in time, rather than actively re-forecasting 2 days prior to the gas day, the day before the gas day, and on the gas day, should re-consider their compliance processes against this rule.

Responses outlined that demand forecasts are based on complex mathematical models that account for many variables. The participants noted the importance of accurate weather forecasting for the accuracy of their demand forecasts. Registered participants explained that submission of demand forecasts can occur at predetermined times, such as shortly before rescheduling cut-off times, or alternatively on a more ad-hoc basis when a significant variation occurs in key model inputs (such as the weather forecast).

Participants noted the existence of commercial incentives to forecast accurately, in particular deviation payments which increase in line with forecasting inaccuracy. That said, some registered participants stated they are aware that substantial errors continue to occur in demand forecasting, and that they are seeking to improve these processes due to the commercial incentive to have accurate forecasts.

Review outcomes

The review indicated these participants have generally made efforts to comply with the requirements of clause 211. Some participants place responsibility on specific employees to ensure compliance with the rule. The AER considers that this may help ensure compliance, but notes that the participant is ultimately responsible.

Some participants did not demonstrate sufficient response to forecasting errors. The AER understands that some inaccuracy is inherent in demand forecasting, and that some errors reflect problems with data inputs, including inaccurate weather forecasting. The AER recognises that participants are trying to improve their models and demand forecasting, which should lead to better commercial outcomes across all registered participants. The AER will continue to closely monitor this area to encourage improvements and ensure compliance.

The AER currently reports on demand forecasts, by both market participants and AEMO, in its gas weekly report. The AER will in future also report on actual market participant demand. The AER hopes this will provide greater transparency in relation to forecasting accuracy.

3.2.2 Appointment of a single allocation agent or a single sub-allocation agent

Clause 229 of the Gas Rules states that when multiple market participants inject gas or tender gas for injection at a system injection point, they must appoint a single allocation or a sub-allocation agent. The AER selected clause 229 for review when it became aware of issues identified by AEMO in respect of allocation agents for the Culcairn system point.

The review focussed on:

- identifying injection points where multiple participants inject gas

- examining processes for the appointment of agents
- considering participant arrangements to ensure the agent acts appropriately.

The AER sought information from Energy Australia, Origin Energy and Victoria Electricity.

Response summary

Responses indicated that agents had been appointed under multilateral agreements for most injection points. However, this did not occur at Culcairn and AEMO had acted as a de-facto allocation agent at Culcairn (in accordance with clause 229(12)). The participants indicated that their contractual arrangements include requirements for compliance with this rule.

Most responses also confirmed that audit procedures are in place to ensure that the agents comply with clause 229.

Review outcomes

The review indicated that participants have made efforts to comply with the requirements of clause 229. However, some participants gave insufficient detail of how they monitor the compliance of the allocation agent they have appointed. The AER considers that participants should have robust compliance and auditing procedures and ensure these are followed in practice. The AER will follow up with those participants that provided insufficient detail to ensure that appropriate compliance measures are in place.

The AER received a copy of a draft allocation agreement to appoint an allocation agent at Culcairn. The rules do not envisage that AEMO will continue to act as a de-facto allocation agent under clause 229(12) at Culcairn, therefore the AER will continue to monitor the progress of participants in achieving compliance with this clause at Culcairn.

3.2.3 Upcoming targeted compliance reviews

The AER will target a number of provisions of Part 19 of the Gas Rules (which relate to the Victorian Wholesale Gas Market) for compliance review in the December 2009 quarter, including:

- clause 324, regarding the provision of annual forecasts by registered participants to AEMO for the next 5 years
- clause 333, regarding the notification to AEMO of any emergency event or situation as outlined in the Gas Rules
- clause 279, regarding the operation of the LNG storage facility.

A list of gas provisions targeted over previous quarters is provided in **Appendix B** of this report.

4 Electricity

The AER is responsible for monitoring, investigating and enforcing compliance with the national electricity framework. The AER has functions under the Electricity Law and Electricity Rules.

4.1 Update on investigations, market events, enquiries and compliance issues

4.1.1 Babcock and Brown Power infringement notices

On Monday 14 September 2009, the AER served infringement notices on two Babcock and Brown Power (BBP) generators, Playford and Braemar, alleging two breaches of the Electricity Rules.

On 11 February 2009, a combination of high wind generation and generation from Playford power station caused the violation of a network constraint equation aimed at preventing the overloading of a transmission line in the area. In response, AEMO issued dispatch targets to Playford to reduce its output. Despite repeated instructions, Playford continued to generate electricity above the dispatch targets for about one hour.

Accordingly, the AER has alleged that Playford did not follow dispatch instructions on 11 February 2009, in breach of clause 4.9.8(a) of the Electricity Rules.

The AER also considers that unit 1 of the Braemar power station did not follow dispatch instructions on 17 March 2009. Despite AEMO invoking a constraint limiting Braemar's output to zero until 1.05 p.m., Braemar unit 1 began generating power at 12.47 p.m.

Each alleged breach carries an infringement penalty of \$20,000. Since BBP has paid the infringement penalties, the matter is now closed. AER will shortly release an investigation report. Payment of the two \$20,000 infringement penalties does not entail an admission by BBP that it breached the Electricity Rules.

In addition, the AER identified issues with BBP's compliance with clause 4.9.9 of the Electricity Rules, with respect to changes in the availability of Playford on the

morning of 11 February 2009. Clause 4.9.9 requires that generators advise AEMO, without delay, of any changes in availability. The AER has obtained an undertaking from BBP to improve its compliance processes in this area. The AER will soon issue a compliance bulletin in relation to the requirements to provide accurate information to AEMO including under clause 4.9.9.

4.1.2 Compliance with final settlement requirements

On 21 August 2009, AEMO notified the AER of a late final settlement payment by Diamond Energy Pty Ltd (Diamond Energy). AEMO reported that Diamond Energy's payment missed the 10.30am deadline by 21 minutes on 31 July 2009.

The timely payment of market settlements is required for the effective operation of the market. AEMO is required to accept payments and distribute those funds to counterparties. Any payment after the 10:30am deadline can result in a deficit in the funds available for distribution to other participants. As there is no mechanism available for AEMO to make up any shortfall, compliance with the settlement timetable is critical.

On 2 September, the AER wrote to Diamond Energy requesting a detailed explanation for the late settlement payment. The AER also requested information on its compliance procedures for timely settlement payments, as required by clause 3.15.16 of the Electricity Rules.

Diamond Energy responded on 8 September 2009 that the settlement was delayed due to an internal error at its banking facility. Diamond Energy also outlined the improved internal procedures that have been implemented to ensure future compliance with the required settlement timetable.

Following consideration of the material provided, the AER notified Diamond Energy that no further action would be taken on this occasion.

4.1.3 General rebidding inquiries arising from monitoring

The AER monitors the performance of the NEM on an ongoing basis to screen for indicators of any non-compliance. This monitoring relies on publicly available data and information provided by AEMO and other entities. While market monitoring is used to screen for non-compliance with a wide range of provisions, this part of the

report focuses on queries made by the AER in relation to rebidding.⁵

Clause 3.8.22A of the Electricity Rules requires scheduled generators and market participants to make dispatch offers, dispatch bids and any rebids in “good faith”.

Under clause 3.8.22 of the Electricity Rules, market participants must provide to AEMO, at the same time as a rebid is made:

- a brief, verifiable and specific reason for the rebid; and
- the time at which the event(s) or other occurrence(s) adduced by the market participant as the reason for the rebid occurred.

Equivalent requirements apply where a market participant advises AEMO that a scheduled generating unit, scheduled network service or scheduled load is inflexible,⁶ under clause 3.8.19 of the Electricity Rules.

Table 2 summarises the number of compliance issues reviewed by the AER during the September quarter relating to the quality of rebid reasons provided under clauses 3.8.19 (inflexibility) and 3.8.22 (rebidding).

⁵ In the NEM, scheduled generators and market participants submit wholesale electricity offers and bids for each of the 48 intervals in a trading day. These offers and bids cover prices and volumes in up to 10 price bands, and can be varied through rebidding.

⁶ The situation where, in accordance with the Electricity Rules, a scheduled generating unit, scheduled load or scheduled network service is only able to be dispatched in the trading interval at a fixed loading level specified in accordance with clause 3.8.19(a) of the Electricity Rules.

Table 2: Rebidding reviews in the September 2009 quarter

Electricity Rules Clause	Compliance issue	No. of participants under review
3.8.19(b)(1)	The rebid submitted does not provide a brief, verifiable and specific reason why the scheduled generating unit, scheduled network service or scheduled load is inflexible	2
3.8.22(c)(2)(i)	The rebid submitted does not provide a brief, verifiable and specific reason for the rebid	1
3.8.22(c)(2)(ii)	The rebid submitted does not include the time at which the event(s) or other occurrence(s) adduced by the scheduled generator or market participant as the reason for the rebid occurred	17

4.1.4 Spot price events exceeding \$5,000/MWh

The AER is required to publish a report covering the circumstances in which the spot price in the electricity wholesale market or the electricity ancillary services market exceeds \$5,000/MWh in a trading interval.⁷ The reports enhance the transparent operation of the NEM and help identify instances of non-compliance.

There were no instances of the price exceeding \$5000/MWh in a trading interval during the September quarter.

4.1.5 Consultation on revised Rebidding and Technical Parameters Guideline

On 25 September 2009, the AER published a guideline on rebidding and technical parameters. The guideline outlines the details that must be contained in a rebid reason

⁷ See clause 3.13.7(d) and (e) of the Electricity Rules. A trading interval is a 30-minute period ending on the hour (Australian Eastern Standard Time) or on the half hour and, where identified by a time, means the 30 minute period ending at that time. Market ancillary services are required to maintain the power system frequency within the standard. These services are offered into the market systems by registered providers (usually generators) along with energy market offers from the same provider and dispatched by NEMMCO in each 5-minute dispatch interval.

submitted to AEMO. It also covers related matters associated with the bidding and rebidding of technical parameters.

The final guideline includes five changes from the earlier draft version. In particular:

- it recognises the impact that legal operating requirements (e.g. environmental limits) can have on minimum operating levels
- it removes the requirement to include an estimate of the duration of a below minimum ramp rate or inflexibility, if this information is inherent in other data provided with the offer or rebid
- where a rebid is submitted in response to a series of events, the ‘most significant’ of the series must be provided in the rebid reason, replacing the ‘first event’ approach in the draft
- ramp rates in offers and rebids need only be brought into line with supervisory control and data acquisition (SCADA) ramp rate values where dispatch would be impacted
- there are minor wording changes to clarify that when a ramp rate is rebid, it only takes effect from the next dispatch interval.

The AER recognises that compliance with the new guideline will require changes in the business practices of many participants. Following consultation with the National Generators Forum, the AER has determined that the new guideline will take effect on 1 December 2009.

4.2 Audits

Auditing is one mechanism used by the AER to verify and assess compliance by registered participants with their obligations under the Electricity Law, the Electricity Regulations and the Electricity Rules. The audits aim to ensure that market participants have robust and effective compliance programs in place.

There are two main types of audits:

- audits of registered participants’ internal systems and processes
- technical audits focusing on compliance with technical standards under the

Electricity Rules.

During the September 2009 quarter, the AER commenced a review of Eraring Energy's compliance program in respect of its obligations under clause 4.15 of the Electricity Rules. The clause requires that a compliance program be instituted and maintained to monitor compliance with the registered performance standards.

The AER has reviewed the information provided by Eraring Energy in response to an audit questionnaire prepared by AER staff. Further to this internal review, the AER held two meetings with Eraring Energy to clarify some elements of its compliance program. This audit is ongoing and the AER expects to publish a summary of the results in the December quarterly compliance report.

The AER is also finalising arrangements for a review of TransGrid's compliance with clause 5.7.4(a1) of the Electricity Rules. Clause 5.7.4(a1) relates to the requirement for a compliance program, in respect of a TNSP's protection and control systems and the performance requirements of schedule 5.1. The AER is currently finalising the audit questionnaire, which will form the basis of the information request to TransGrid.

4.3 Targeted compliance reviews

As discussed in part 2 of this report, targeted compliance reviews are an important element of the AER's compliance monitoring activities. The AER targets the provisions of at least 24 Electricity Rules each year for detailed review.

Appendix B lists the Electricity Rules provisions targeted over the last four quarters. Table 3 below lists the provisions targeted in the September quarter.

Table 3: Electricity Rules provisions targeted for review – September 2009 quarter

Clause	Relevant parties (subject to the current review)	Obligation	No. of targeted participants
1.11	AEMO	AEMO rule funds	1
3.3.7		Drawing on credit support	
3.3.8		Maximum credit limit and prudential margin	
5.7.6	TNSP	Tests of generating units requiring changes to normal operation	1
8.6	Registered participants	Confidentiality	3

4.3.1 AEMO's Rule Fund and prudential obligations

In July 2009, the operational responsibility for the NEM transferred from NEMMCO to AEMO. As part of the transitional arrangements, the AER reviewed AEMO's compliance with some of the key financial operations required of the market operator, including clauses 1.11, 3.3.7 and 3.3.8.

Clause 1.11 requires AEMO to maintain, in the books of the corporation, a series of funds for registration, administration, security deposits and any other fund which the Rules provide should be maintained.

Clause 3.3.8 requires AEMO to determine, for each participant, a maximum credit limit and prudential margin. These dollar amounts are to cover a reasonable worst case estimate of payments due from the participant. Where a participant does not meet the acceptable credit criteria, it must secure credit support to cover its maximum credit limit. AEMO can draw on that credit support whenever the participant defaults. However, any drawings on the credit support by AEMO may trigger a requirement for the participant to then secure further credit support so that the participant's credit limit is once again covered.

The AER requested information from AEMO to ensure that the above procedures have remained in place with the transition of powers from NEMMCO.

Response Summary

AEMO confirmed that the relevant accounts, funds and procedures had transitioned across successfully from NEMMCO. A market clearing account is maintained that acts as the registration and administration fund for the NEM.

The response indicates that appropriate records are kept of these funds, as required under clause 1.11. The Market Management System and Austraclear are used to settle the wholesale market and channel funds. Coordination of payments into and out of these accounts is maintained via communications between the AEMO finance and AEMO settlement teams. AEMO confirmed that as well as determining the required credit support for a participant, it will advise the finance team when it expects a particular participant to pay a security deposit. These funds are put into an investment account with a unique number for identification.

AEMO has noted that while it has appropriate systems in place to notify a participant of any requirement to draw on the credit support held on account, this has not been required to date.

The method for determining the maximum credit limit and prudential margin for each participant is published on the AEMO website.⁸ Under this method the amounts are reviewed every three months. To date there have been no instances of delays in AEMO meeting its requirements under clauses 1.11, 3.3.7 or 3.3.8.

Review Outcome

The AER considers that settlement procedures are very important for the operation of entire NEM. The AER is satisfied that the requirements under clauses 1.11, 3.3.7 and 3.3.8 have successfully transitioned to AEMO, and will continue to be complied with.

4.3.2 Tests of generating units requiring changes to normal operation

Clause 5.7.6(a) allows a network service provider to require a test of any generating unit connected to the network at intervals of not less than twelve months. Clause 5.7.6(b) gives AEMO the ability to direct the network service provider to conduct

⁸ See <http://www.aemo.com.au/electricityops/prudentials.html#CLM>

tests. Clause 5.7.6(d) requires that the network service provider use its best endeavours to ensure it conducts tests at a time that will minimise the departure from unit commitment and dispatch that are due to take place at that time.

Response Summary

Powerlink responded that with the advent of a number of new generators in the Queensland region over recent years, each requiring extensive testing under clause 5.8, additional testing under clause 5.7.6 has not been necessary. Powerlink has nonetheless developed protocols to address clauses 5.7.6(a) and (d).

In its response, Powerlink noted that should it request testing under clause 5.7.6, it may be possible to complete some tests while the unit is online with minimal disruption to dispatch. Other tests may require plant to be offline. For these tests, Powerlink stated it would negotiate with the generator to undertake testing when the generator is due to be offline for other reasons. While Powerlink has noted these considerations, it does not have any formal parameters when attempting to minimise disruptions, but would consider the extent of testing required when negotiating access to the generator with the generator owner.

Powerlink coordinates testing requests made by generators under clause 5.7.5 or generator compliance programs through Powerlink's Network Customers Group. The group can identify any conflicts in the proposed testing programmes early and would seek to coordinate the requests as far as possible.

Powerlink also reported that AEMO has never instructed it to undertake testing under clause 5.7.6(b).

Review Outcome

The response by Powerlink shows that it has never had to request testing nor has AEMO directed it to undertake testing under clause 5.7.6. Instead, Powerlink notes that the testing so far required has been due to the addition of new plant or regular upgrades to existing plant which fall under the requirements of clause 5.8.

The AER notes that Powerlink is aware of the requirements of clause 5.7.6(d) and will endeavour to schedule testing at appropriate times.

The AER intends to conduct further inquiries in this area, including checking whether AEMO has instructed any network business to conduct testing under this provision and whether that testing has occurred.

4.3.3 Confidentiality

The June 2009 report foreshadowed a review of clause 8.6 of the Electricity Rules. This provision relates to the handling of confidential information that a participant is aware of or has in its possession.

The review focussed on the requirement:

- to identify information that is confidential under the Electricity Rules
- to maintain the confidentiality of any confidential information which comes into the participant's possession or control, or of which it becomes aware
- to restrict use and disclosure of any confidential information to the manner permitted by the Rules.

The AER sought information from Loy Yang Marketing Management Company (LYMMCo), International Power and TRUenergy.

Response summary

In all cases the targeted participants confirmed compliance with clause 8.6 and advised they had not received any complaints or identified any issues with compliance with the confidentiality requirements. Further, all respondents indicated they understood their obligations under the clause.

Review outcomes

The review found that these participants comply with the requirements of clause 8.6. However, for some participants the compliance framework for confidentiality requirements is less developed than for operational and technical compliance requirements.

The AER considers compliance with clause 8.6 to be important to maintain the confidentiality of commercially sensitive information. Inappropriate handling of information could disrupt the operation of the market by hindering the exchange of

confidential information and cause significant commercial detriment.

4.3.4 Postscript - Establishing or modifying a connection to the network

In its June 2009 quarterly report, the AER began a review of the provisions of the Electricity Rules dealing with establishing or modifying a connection to a network contained in clause 5.3 of the Electricity Rules.

The report noted that from 1 January 2009, the responsibility for the regulation of Victorian electricity distribution networks transferred from the Essential Services Commission of Victoria to the AER, resulting in the AER being responsible for administering both the Electricity Rules and the relevant State instruments. In particular, the Victorian distribution code and applicable guidelines, which also include obligations with respect to connection to the network.

While both regimes co-exist, distribution network businesses in Victoria must, to the extent required, satisfy chapter 5 of the Electricity Rules and the Victorian distribution code and guidelines. The AER will enforce obligations under both these regimes. To the extent there is an unavoidable inconsistency, the AER will consider each matter on a case by case basis and exercise its judgment to resolve it.

The AER has written to the Victorian distribution businesses outlining its position in regard to this overlap reminding them that the obligations of both regimes must be satisfied. This review of compliance with clause 5.3 will be ongoing.

4.3.5 Upcoming targeted compliance reviews

To promote greater awareness and transparency with its targeted compliance review process, the AER provides some indications of which provisions it is likely to target in future quarters. Table 4 below highlights the provisions that the AER intends targeting over the remainder of 2009 and first quarter of 2010.⁹

⁹ The AER will endeavour to publish in its quarterly compliance reports an advance schedule of targeted provisions covering two quarters. The table is indicative only and each provision will be targeted subject to prevailing operational requirements and industry events. The AER will also target other provisions by using other compliance and enforcement mechanisms, as required.

Table 4: Targeted compliance reviews in 2009/10

Electricity Rules Clause	Compliance issue	Quarter
5.2.3	Obligation of network service providers – consistency between schedule 5.1 and connection agreements	December 2009
7.2.5	Metering – role of the responsible person	
3.8.2	Participation in central dispatch	March 2010
4.6.1	Power system fault levels	
4.8.9A	System security directions	
5.2.4	Obligations of customers	
5.3.9	Procedure to be followed by a Generator proposing to alter a generating system	
7.3.1	Metering installation components	

4.4 Jurisdictional derogations

Chapter 9 derogations exempt Victorian smelter traders, New South Wales power traders and nominated generators in Queensland (for the purposes of exempted generator agreements) from complying with the Electricity Rules to the extent that there exists:¹⁰

- any inconsistency between the Electricity Rules and a contractual requirement under the relevant agreement between the various governments and other entities
- any other specified exemption in the jurisdictional derogations.

Each quarter, the AER must prepare an assessment of any acts or omissions that would have breached the rules if these arrangements were not in place.

¹⁰ Refer to clauses 9.4.3 (Smelter Trader – Vicpower Trading), 9.12.3 (Power Traders – Delta Electricity and Macquarie Generation) and 9.34.6 (nominated generators – CS Energy and Stanwell Corporation) of the Electricity Rules.

The participants advised the AER that there were no instances of non-compliance which materially affected the efficient operation of the market during the quarter.¹¹

¹¹ See clauses 9.4.4, 9.12.3 and 9.34.6 of the Electricity Rules.

Appendix A: AER investigations and reporting summary

This is a summary table of the AER's electricity and gas investigations, as well as \$5,000/MWh reports, completed during the last four quarters. It also lists ongoing matters.

Industry	Date of event	Description	Status
Electricity	22-23 February 2008	Investigation into rebidding (Queensland - Stanwell)	Federal Court proceedings commenced
Electricity	31 October 2008	\$5,000/MWh Report – NSW	Issued
Electricity	20 November 2008	\$5,000/MWh Report – Qld	Issued
Gas	22 November 2008	Significant price event – Vic	Review complete
Electricity	13 January 2009	\$5,000/MWh Report – SA	Issued
Electricity	15 January 2009	\$5,000/MWh Report – NSW	Issued
Electricity	19 January 2009	\$5,000/MWh Report – SA	Issued
Electricity	28-29 January 2009	\$5,000/MWh Report – VIC, SA	Issued

Industry	Date of event	Description	Status
Electricity	29-30 January 2009	\$5,000/MWh Report – Tas	Issued
Electricity	29 and 30 January 2009	Investigation into market events when interruptions to transmission lines during a period of record demand led to prices above \$5,000/MWh and load-shedding	Review complete
Electricity	31 March 2009	\$5,000/MWh Report – SA	Issued
Electricity	1 June 2009	\$5,000/MWh Report – Tas	Issued
Electricity	10 – 19 June 2009	\$5,000/MWh Report – Tas	Issued
Electricity	14 September 2009	Alleged breaches of clause 4.9.8(a) by Babcock and Brown Power	Infringement notices served

Appendix B: Targeted rule provisions summary

This is a summary table of the provisions under the Electricity Rules, and Gas Rules targeted for compliance reviews over the last four quarters. The same provision is often targeted over a number of quarters involving different participants.

Quarter ending	Industry	Rules & Clause	Description	No. of Participants targeted
December 2008	Electricity	Electricity Rule 2.2.3	Classification of non-scheduled generators	3
		Electricity Rule 2.3.4	Market Customer obligations	9
		Electricity Rule 3.7A	Market information on planned network outages	5
		Electricity Rule 4.8.12	System restart plan and local black system procedures	1
		Electricity Rule 4.9.2A	Dispatch instructions to Scheduled NSPs	1
		Electricity Rule 7.4.2	Qualifications and registration of Metering Providers	2
March 2009	Gas	Gas Rule 145	Publication of information by Bulletin Board operator	1
		Gas Rule 165	Obligation on production facility operators to provide 3-day production capacity outlook	4

Quarter ending	Industry	Rules & Clause	Description	No. of Participants targeted
		Gas Rule 166	Obligation on production facility operators to provide actual production data	4
		Gas Rule 168	Obligation on Bulletin Board storage providers to provide 3-day production capacity outlook	2
		Gas Rule 169	Obligation on Bulletin Board storage providers to provide actual storage production data	2
		Gas Rule 170	Obligation on pipeline operators to provide nameplate rating information	2
		Gas Rule 172	Obligation on pipeline operators to provide linepack/capacity adequacy indicator	2
		Gas Rule 181	Emergency information	1
		Gas Rule 182	NGERAC or a Jurisdiction may request activation or deactivation of emergency information page	1
		Gas Rule 183	Bulletin Board emergency use indicator	1
		Gas Rule 184	Jurisdiction may make public statements on an emergency	1
	Electricity	Electricity Rule 2.3.4	Market Customer obligations	5

Quarter ending	Industry	Rules & Clause	Description	No. of Participants targeted
		Electricity Rule 4.8.12	System restart plan and local black system procedures	3
		Electricity Rule 4.14	Acceptance of Performance Standards	1
		Electricity Rule 4.15	Compliance with Performance Standards	1
		Electricity Rule 5.3.9	Procedure to be followed by a Generator proposing to alter a generating system	n/a
		Electricity Rule 5.7.3	Test to demonstrate compliance with connection requirements for generators	1
June 2009	Gas	Gas Rules 148 and 154	Maintenance of up-to-date registers of Bulletin Board participants and facilities, including facilities declared exempt.	1
		Gas Rules 152 and 164	Obligation to advise the Bulletin Board operator of any changes to exemption status, and to provide nameplate rating information.	3
		Gas Rules 165 and 166	Obligation to provide 3 day capacity outlook data and actual production flow data to the Bulletin Board.	2
		Gas Rules 173 and 174	Obligation to provide the Bulletin Board operator with aggregated scheduled and aggregated actual injection and withdrawal information.	2
	Electricity	Electricity Rule 5.3.2	Connection inquiry	17

Quarter ending	Industry	Rules & Clause	Description	No. of Participants targeted
		Electricity Rule 5.3.3	Response to connection inquiry	17
		Electricity Rule 5.3.6	Offer to connect	17
September 2009	Gas	Gas Rule 211	Timing of submissions and demand forecasting	4
		Gas Rule 229	Appointment of a single allocation agent or a single sub-allocation agent	3
	Electricity	Electricity Rule 1.11	AEMO rule funds	1
		Electricity Rule 3.3.7	Drawing on credit support	1
		Electricity Rule 3.3.8	Maximum credit limit and prudential margin	1
		Electricity Rule 5.7.6	Tests of generating units requiring changes to normal operation	1
		Electricity Rule 8.6	Confidentiality	3