



Andrew Pirie
AEMC
By email: Pirie@amc.gov.au

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Dear Andrew

Re: Compensation Arrangements Following Application of an Administrative Price Cap and Administered Floor Price

1. This submission is provided by the Wholesale Energy Market Dispute Resolution Adviser (the 'WEMDRA'). The role of the WEMDRA in electricity is established under Chapter 8 of the National Electricity Rules (NER) in particular clause 8.2.2 of the NER. The WEMDRA administers dispute resolution under Chapter 8 of the NER, and provides user notes and project management of claims for compensation for a scheduling error under clause 3.8.24 of the NER. This compensation is recovered from a participant compensation fund established and maintained for that purpose.
2. The WEMDRA has similar roles under the National Gas Rules.

Executive Summary

This submission relates to the process for compensation following the application of an administrative price cap or administered price floor.

The submission acknowledges that the AEMC has the role to provide the rules for compensation for these events. It suggests that the decision on the amount of compensation be left to an expert panel selected and managed by the WEMDRA using pre-existing processes under the NER.

The process for determining compensation (with reference to the policy and rules) should use existing resources, processes and machinery already available for compensation claims arising from scheduling errors under the NER.

This suggestion will meet the objectives of the NEO, afford transparency, certainty and avoid duplication of resources. It also provides a separation of the roles of rule maker and the application/review of the rules which is consistent with good administrative practice

Background to Rule Change Proposal:

3. The proposed amendments relate to changes to the provisions of the NER which set out the process for compensation following the application of an Administrative Price Cap (**APC**) or Administered Floor Price (**AFP**). The changes are based on the Australian Energy Market Commission (**AEMC**) recommendations coming out of its review of arrangements for compensation.
4. The background to the reasons for the changes and the policy behind compensation, together with the request on assessment process is set out in the summary Rule change and proposal dated 16 October 2013.
5. A draft rule determination was circulated on 13 August 2015 for comment (**draft determination**). The draft determination provides an assessment process for compensation which is additional to the rule change request of October 2013.
6. This submission is focussed on the process for assessment for compensation.

Purpose of the Rule Change

7. The draft determination provides that the compensation rules are designed to contribute to the National Electricity Objectives (**NEO**) by:
 - a. Enhancing the reliability of electricity supply
 - b. Increasing the transparency and reducing the administrative costs of assessment process**
 - c. And contributing to the efficient recovery of compensation from the consumers.*(Emphasis added).*

8. Any rule change needs to advance the NEO as articulated by the AEMC, be harmonious with the NER more generally and - it is submitted - give weight to the desirability of maintaining separation between rule-making and rule-administering functions.
9. As well as such separation being sound in principle from a public administration perspective (because it avoids any suggestion that a bias may arise in relation to any future assessment that the AEMC may be called upon to perform in its rule-making capacity as the efficacy of administration / quality of outcomes), separation is in principle no less efficient than delegation of the decision-making function to a person other than the AEMC, and in this instance maintaining separation is more efficient.

General Proposal on the process for review of decisions

9. As well as compensation for AFP and ACP, Chapter 3 of the NER also establishes provisions for compensation for scheduling errors, such compensation being drawn from the participant compensation fund that is established for this purpose. It is submitted that the compensation for ACP and AFP should use existing resources, processes and machinery available for

compensation claims arising from scheduling errors under the NER. The process for scheduling errors is outlined in points 21-27 below.

Proposed Changes to Compensation Claims Assessment Process in the Rules:

10. The current process for compensation for APC and AFP is set out in 1.3.3 on page 6 of the draft determination.
11. The rule change request notes that the current compensation assessment process lacks flexibility and transparency and may result in an inefficient assessment process. The proposed rule change in the draft determination proposes the removal of the dispute resolution adviser *“as it was not clear if the additional time required in the process through the involvement of the adviser was justified by any benefits that this offers.”* (See 1.5 on page 10 of the draft determination). The reference to the Adviser is the WEMDRA
12. It seems logical that double handling of the compensation claim by both the AEMC and the panel selected by the WEMDRA would result in lack of efficiency and increase in cost. **I agree that it would be useful to reduce the cost and time involved with the double handling.** I suggest removing the role of the AEMC in the deciding of compensation.
13. The AEMC has a clear and important role in setting the guidelines for how compensation is to be determined, who is eligible, for compensation, what periods should be compensated and what categories of loss are compensable. There are advantages in the application of these guidelines being undertaken by someone independent of the AEMC.
14. First a general proposal drawn from administrative law: it is useful for there to be a separation between the person making the rules and the person reviewing a decision under the rules. If the guidelines were interpreted and applied by experts external to the AEMC it would more easily inform future modification and improvement by the AEMC. (See for example Australian the Administrative Law Policy guide at <http://www.ag.gov.au/LegalSystem/AdministrativeLaw/Documents/Australian%20Administrative%20Law%20Policy%20Guide.pdf>)
15. A separation between rule making and deciding could still give the AEMC (and AEMO) a role in compensation. The boundaries of the role could be clearly articulated and could be agreed with reference to the role of AEMO in scheduling errors. In general terms that role would be to **assist** the process rather than to **decide** compensation.
16. Second there is merit in having a process that is consistent with other compensation claims in chapter 3. This allows for the market to build capacity in the process of evaluation such claims. This is especially the case given the number of claims for compensation in the NEM are few (see 1.2.1 of page 3 of the draft determination).



17. Third, it is difficult to predict the type of claim, its quantum, the time required or the issues that must be raised. To be effective the regime must afford flexibility and also be able to adjust to unknowns as they become evident and known. The dispute resolution (and compensation) regime in Chapter 8 already has mechanisms of this nature built in. It is efficient to use and fine-tune one mechanism rather than have to administer multiple mechanisms which are not used frequently.
18. Fourth using external expertise in assessing the compensation, allows costs to be transparent, directly calculated and included as part of any compensation claim rather than being an indirect cost to the whole market through the AEMC.
19. Fifth, it will provide an opportunity to fine-tune the Rules in Chapter 8 to deal directly with the WEMDRA role in compensation claims, and have the mechanism in one place making any future adjustments simple and streamlined.

The Current Compensation Regime for Scheduling Errors

20. It may be useful to understand in general terms the process for dealing with compensation for scheduling errors, given that it is proposed a similar one apply. The application to these claims is set out as a high level sample below.
21. The compensation for errors, requires the party asserting a scheduling error and seeking compensation, to first request confirmation from AEMO that a scheduling error has occurred. AEMO has the role of confirming an error and the process for deciding compensation is charged to an expert panel established for the purpose by the WEMDRA.
22. The expert Panel derives its powers and its process from Chapter 8 of the NER.
23. Where the scheduling error is confirmed and the principles for compensation are agreed between the applicants for compensation and AEMO, the expert process deciding compensation is simple, fast track and involves a one person expert panel.
24. If there is a dispute about whether a scheduling error has occurred and/ or any aspects of compensation is not agreed by the applicants for compensation and AEMO the process can be more involved, require more time, and a panel of up to 3 experts.



Principles of compensation/Dispute Resolution

25. The expert panel is run in accordance with Australian legal protocol that is the parties provide the panel with submissions and the experts use their expertise to make a determination (Rather than a panel that investigates and consults on its own accord).
26. The expert panel is provided with the criteria/ policy to apply such criteria being found in the relevant sections of the NER.
27. The expertise of the panel differs depending on the needs of the matter and can include legal, regulatory, economic or market expertise and a combination thereof.
28. Guidelines on the process for compensation are drafted and published by the WEMDRA from time to time (see: <https://www.aer.gov.au/system/files/Guidelines%20and%20application%20for%20compensation%20for%20a%20scheduling%20error.pdf>)

Sample of the process steps for APC and AFP

Simple claim

- In the event that a participant had a claim it would notify AEMC and the AEMC (or AEMO) would confirm that there was a claim. The participant together with the AEMC will identify whether it is a direct or opportunity cost claim and the likely number of affected stakeholders.
- If it is a direct costs claim with one party only, then the AEMC and the participant would notify the WEMDRA and by agreement a single member expert panel would be established.
- The market would be notified through the DMS contacts the mechanism established under Chapter 8 of the NER.
- Joinder is possible if someone has an interest in the claim and the expert has power to join the parties under Chapter 8 of the NER.
- The Participant would file a statement and calculation seeking compensation.
- The AEMC could provide any additional information or raise any concerns as it sees fit as the Rule maker.
- The one member panel would hold a short round table conference (in person or by phone) and the compensation would be confirmed.
- AMEC would be free to review any issues or inefficiencies with the process or application of the Rules.



Less simple claim

- Any claim which is more complex either because of multiple parties, or because of disputes on the methodology, would be run so that the parties and the AEMC have the opportunity to ask the experts to extend timelines for consultation (if required) or filing of evidence (if required).
- The onus would be on the parties seeking compensation to satisfy a panel of the loss and the veracity of any underlying factual matters/reliability of the calculation.
- The AEMC would be able to express any concerns it had with the methodology proposed as an assistant to the experts.
- Any determination of an expert panel under Chapter 8 is binding.

Next Steps

29. If this submission were accepted then a small number of adjustments would be required to Chapter 3 and Chapter 8 to give effect to this intention.

I am available for further discussion.

Sincerely

Shirli Kirschner

Wholesale Energy Market Dispute Resolution Adviser

M: 0411 380 380