



REVIEW

Australian Energy Market Commission

FINAL DECISION

Compensation claim from Synergen Power Pty Ltd

Commissioners

Pierce
Henderson
Spalding

8 September 2010

Inquiries

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

E: aemc@aemc.gov.au

T: (02) 8296 7800

F: (02) 8296 7899

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About the AEMC

The Council of Australian Governments, through its Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005 to be the rule maker for national energy markets. The AEMC is currently responsible for rules and providing advice to the MCE on matters relevant to the national energy markets. We are an independent, national body. Our key responsibilities are to consider rule change proposals, conduct energy market reviews and provide policy advice to the Ministerial Council as requested, or on AEMC initiative.

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Executive Summary

Background

The National Electricity Rules (NER or Rules) provide for Australian Energy Market Operator Limited (AEMO) to cap electricity spot market prices (at the Administered Price Cap (APC)) if there is a prolonged period of high electricity prices in a region, as such periods are likely to cause financial stress for market customers if continued. Scheduled generators who are dispatched during these periods of capped spot market prices (an administered price period (APP)) may claim compensation for costs incurred, or opportunities foregone, as a result of the application of the APC (provided they meet the eligibility criteria in clause 3.14.6 of the Rules).

This report

This report is the Australian Energy Market Commission's (AEMC or Commission) final decision on Synergen Power's compensation claim following the application of an APC during an APP in South Australia between 29 January 2009 and 7 February 2009. The Commission has decided that compensation is payable by AEMO to Synergen Power in respect to its compensation claim, and that the amount of compensation payable is \$130 486.94, assuming a settlement date of 1 October 2010.

The compensation claim

Synergen Power Pty Ltd lodged a claim for compensation under clause 3.14.6 of the Rules following the application of the APC during an APP in South Australia between 29 January 2009 and 7 February 2009.

Synergen Power claimed compensation for the generation output from its Port Lincoln gas turbine and Snuggery power station, both located in South Australia. These generating units are Market Scheduled Generators registered to Synergen Power Pty Ltd.

The administered price period

During a period of high spot market prices in the South Australian electricity market, National Electricity Market Management Company Limited (NEMMCO) determined that an APP be applied in South Australia commencing the 15:30 hours trading interval on 29 January 2009 and ceasing the 04:00 hours trading interval on 7 February 2009.

During the APP, the APC of \$300/MWh applied for all periods to energy dispatch prices and all market ancillary service prices in South Australia. Synergen Power claimed for direct costs (and associated financing costs) incurred in operating these generating units during the APP which exceeded the spot market income it received for these generating units during this period.

Assessment of the compensation claim

This claim has been considered by the Commission under clause 3.14.6 of the Rules. Under this clause, the Commission must determine whether compensation is payable, and if so, the amount of compensation payable. Clause 3.14.6(c)(1) of the Rules indicates that the objective of paying compensation is to maintain the incentive: for scheduled generators, scheduled network service providers and other market participants to invest in plant that provides services during peak periods; and for market participants to supply energy and other services during an APP.

This is the first compensation claim considered by the Commission under this clause. The Commission published "The Determination of Compensation Following the Application of the Administered Price Cap, Market Price Cap, Market Floor Price or Administered Floor Price Guidelines" (compensation guidelines) to support the operation of this clause on 1 July 2009.

The Panel

A three member panel comprising Geoff Swier (Chair), Sibylle Krieger and Bob Graham was engaged to assess and advise the AEMC on the compensation claim. The Panel has rigorously analysed Synergen Power's compensation claim, and its recommendations to the AEMC are provided in its final report, dated 18 August 2010.

The final decision

In this final decision, the Commission has considered its responsibilities under the Rules and the National Electricity Law (NEL), and taken into account submissions received on the draft documents, the compensation guidelines and the recommendations in the Panel's final report. The Commission has decided that compensation is payable by AEMO to Synergen Power in respect to its compensation claim, and that the amount payable is \$130 486.94, assuming a settlement date of 1 October 2010.

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1 Background

1.1 Synergen Power's compensation claim

Synergen Power Pty Ltd lodged a claim for compensation under clause 3.14.6 of the Rules following the application of the APC during an APP in South Australia between 29 January 2009 and 7 February 2009.

Synergen Power claimed compensation for the generation output from its Port Lincoln gas turbine (2 x 25 MW) and Snuggery power station (3 x 21 MW), both located in South Australia. These generating units are Market Scheduled Generators¹ registered to Synergen Power Pty Ltd.

During a period of high spot market prices in the South Australian electricity market, NEMMCO² determined that an APP be applied in South Australia commencing the 15:30 hours trading interval on 29 January 2009³ and ceasing the 04:00 hours trading interval on 7 February 2009⁴.

During the APP, the APC of \$300/MWh applied for all periods to energy dispatch prices and all market ancillary service prices in South Australia. Synergen Power claimed for direct costs (and associated financing costs) incurred in operating these generating units during the APP which exceeded the spot market income it received for these generating units during this period.

1.2 Purpose of paying compensation

The Rules provide that the objective of paying compensation under clause 3.14.6 of the Rules is to maintain the incentive: for scheduled generators, scheduled network service providers and other market participants to invest in plant that provides services during peak periods; and for market participants to supply energy and other services during an APP.⁵

As indicated in the Commission's compensation guidelines, the compensation regime provided by the Rules "is just one component of the market's broader Market Price Cap (MPC) - Cumulative Price Threshold (CPT) - Administered Price Cap (APC) mechanism, which, as a whole, provides a comprehensive framework to provide investment signals and manage risks faced by retailers and other market participants."⁶

1 NER clauses 2.2.2 and 2.2.4.

2 Since 1 July 2009, called Australian Energy Market Operator Limited (AEMO).

3 NEMMCO Market Notice 24605.

4 NEMMCO Market Notice 24884.

5 NER clause 3.14.6(c)(1).

6 Compensation guidelines, section 5, p.3.

Compensation may be payable after a number of hours in which sustained high spot market prices (up to the MPC⁷) breach the CPT and result in an APP in a region. These high spot market prices, together with the levels at which the CPT⁸ and APC⁹ have been set, are intended to provide the necessary investment signals to participants.

The payment of compensation under clause 3.14.6 of the Rules recognises regulatory risk that some participants may face in the market. It also ensures that such participants are not disadvantaged by continuing to participate in the market during high stress periods, such as APPs or other events.

The payment of compensation under clause 3.14.6 of the Rules is consistent with the national electricity objective¹⁰ as, when considered together with the broader MPC-CPT-APC mechanism, it promotes efficient investment in, and efficient operation and use of, electricity services to ensure reliability of the national electricity system during high stress events in the market. Providing for compensation to be payable during such high stress events encourages participants to behave in a manner that contributes to the reliable operation of the national electricity system, minimising electricity supply interruptions, which is in the long term interests of consumers.

1.3 Role of the AEMC in determining compensation

Clause 3.14.6 of the Rules provides for compensation due to the application of an administered price cap, market price cap, market floor price or administered floor price. Under this clause, the AEMC must develop and publish compensation guidelines which support the operation of this clause. The AEMC published the first compensation guidelines on 30 June 2009. These guidelines commenced on 1 July 2009.

If an eligible party¹¹ intends to apply for compensation under clause 3.14.6 of the Rules, it must notify AEMO and the AEMC of its intent to claim compensation within five business days of the trading interval in which dispatch prices were adjusted in accordance with clause 3.9.5 of the Rules or notification by AEMO that an APP or period of market suspension has ended.¹²

Following receipt of a notification under clause 3.14.6(b) of the Rules, the AEMC must request the Dispute Resolution Adviser¹³ to establish a three member panel (Panel) to provide advice on the claim. The Panel is selected from the group of persons available to be appointed to the Dispute Resolution Panel.¹⁴ The Panel provides recommendations to the AEMC as to whether:

7 NER clause 3.9.4(b) currently sets the MPC at \$12 500/MWh from 1 July 2010.

8 NER clause 3.14.1(c) currently sets the CPT at \$187 500 from 1 July 2010.

9 Currently set at \$300/MWh for all regions at all times.

10 Section 7 of the NEL.

11 As specified in NER clauses 3.14.6(a), (a1), (a2) and (a3).

12 NER clause 3.14.6(b).

13 As specified in NER clause 8.2.2(a).

14 As established under NER clause 8.2.6A.

- compensation should be payable by AEMO in relation to a claim; and
- if so, the amount of compensation that should be paid.¹⁵

In preparing its recommendations to the AEMC, the Panel must apply the compensation guidelines.¹⁶ In making its decisions on the compensation claim, the AEMC must apply the compensation guidelines unless it is satisfied that there are compelling reasons not to do so¹⁷ and must take into account the recommendations of the Panel and any submissions made on the Panel's draft report and the Commission's draft decision.¹⁸

The AEMC may also recover from a claimant any costs incurred by the AEMC and the Panel in carrying out their functions under clause 3.14.6 of the Rules, in respect of the claim for compensation. If costs are to be recovered, the AEMC may require the claimant to pay all or a proportion of those costs prior to the claim being considered or determined.¹⁹

1.3.1 Timetable for publication of Commission decision

As required by clause 3.14.6(i) of the Rules, the Commission published its draft decision on this claim on 23 June 2010.

Under clause 3.14.6(n) of the Rules, the Commission is required to publish its final decision not later than fifteen business days after receiving the Panel's final report. The Panel submitted its final report on 18 August 2010. Accordingly, this final decision on the compensation claim is dated 8 September 2010.

15 NER clause 3.14.6(g).

16 NER clause 3.14.6(l).

17 NER clause 3.14.6(p).

18 NER clauses 3.14.6(m) and (o).

19 NER clause 3.14.6(q).

2 AEMC process for assessing this compensation claim

This compensation claim from Synergen Power Pty Ltd is the first compensation claim to be considered by the AEMC under clause 3.14.6 of the Rules.

2.1 The Panel

As required by the Rules, on 28 July 2009 the Commission requested that the National Electricity Market (NEM) Dispute Resolution Adviser establish a three member panel to assess Synergen Power's compensation claim. The Panel established to assess Synergen Power's compensation claim comprises Geoff Swier as the Chair, Sibylle Krieger and Bob Graham. The Panel has been engaged since 25 September 2009 to assess this compensation claim.

The Panel has worked closely with the AEMC to assess the information provided by Synergen Power and AEMO in accordance with the compensation guidelines, and advised when clarification of information was required. The Panel advised the AEMC when all the information provided by Synergen Power was sufficient for it to assess the compensation claim and prepare its draft report.

The Panel provided its draft report on Synergen Power's compensation claim to the Commission on 14 May 2010 and the draft report made recommendations in accordance with the Panel's obligations under clause 3.14.6(g) of the Rules. Provision of the Panel's draft report was delayed while the treatment of confidential information and the appropriate interpretation of dispatch offer were considered.²⁰

Following the consultation period on the Panel's draft report and the Commission's draft decision, the Panel sought clarification from the AEMC on whether the issues raised in submissions were within scope for the Panel's consideration of the compensation claim. The AEMC advised that the policy issues raised in the Origin Energy submission were beyond scope for the Panel. Accordingly, the Panel did not address Origin Energy's submission in its final report.

In addition, in order to enable the Commission to advise AEMO of the total amount of compensation payable to Synergen Power for each relevant trading interval²¹, the Commission requested the Panel to calculate these amounts. The Commission accepts the Panel's methodology for allocating the total compensation amount payable for each generating unit by relevant trading interval, and the resulting amounts.²² Given Synergen Power's wide claim for confidentiality in this claim, these amounts will be provided to AEMO in confidence.

²⁰ In accordance with NER clause 3.14.6(h)(1), the Panel was required to provide its draft report to the Commission by 10 May 2010.

²¹ Compensation guidelines, section 9.2, p.8.

²² Expert Panel, Final Recommendations to the Australian Energy Market Commission, Assessment of Synergen's Claim for Compensation Pursuant to Clause 3.14.6 of the National Electricity Rules, 18 August 2010, section 10.2.

The Panel has been rigorous and meticulous in its analysis of Synergen Power's compensation claim throughout the process. The Commission is confident that the Panel's final recommendations are well considered, thorough and robust. The Panel provided its final report on Synergen Power's compensation claim to the Commission on 18 August 2010. The Panel's final report made recommendations in accordance with its obligations under clause 3.14.6(g) of the Rules.

2.2 Information requirements from Synergen Power

Synergen Power provided information in support of its claim, having regard to the requirements in the compensation guidelines²³ on 18 August 2009. However, the Commission recognised that the timing provided in the Rules for assessing a compensation claim does not provide for any delays or extensions of time in the process. In practice, this meant that there would not be any opportunity to verify or clarify the details of Synergen Power's claim, once the timing in the Rules commenced. Accordingly, the Commission corresponded with Synergen Power to ensure that the information provided in support of its claim, including evidence using normal business documents to verify its claim, was sufficient for the Panel to assess the claim prior to formally commencing the assessment process. The Commission commenced formal assessment of the compensation claim on 24 March 2010. A chronology of this compensation assessment process is provided in Appendix A.

2.3 Information requirements from AEMO

AEMO provided information in accordance with the requirements in the compensation guidelines²⁴ on 11 September 2009. Further clarification of some of the information was provided on 18 November 2009. AEMO also provided advice on the settlements process and its compensation recovery process on 23 July 2010.

2.4 Confidentiality

In this claim, Synergen Power has made a wide claim for confidentiality - seven of the eight Annexures to the details of its claim are subject to a claim of confidentiality. The body of its claim refers to the contents of each of the Annexures, namely: Annexures 1 and 8 - discusses alternative operating scenarios during the APP; Annexure 2 - calculation of the total claimable amount in accordance with the compensation guidelines; Annexure 3 - particulars of its direct costs in accordance with the categories of eligible costs in the compensation guidelines; Annexures 4 and 6 - calculation of its financing costs; Annexure 5 - details of its direct costs; and Annexure 7 - its spot market income during the APP (not confidential). In addition, all further information requested by the AEMC to verify and substantiate Synergen Power's compensation claim are also subject to a claim of confidentiality.

²³ Compensation guidelines, section 9.1.1, p.7.

²⁴ Compensation guidelines, section 9.1.2, pp.7-8.

In assessing this claim, the Commission has assessed the legal basis for the confidentiality section of the compensation guidelines, and determined that this section is inconsistent with the AEMC's obligations to protect confidential information under the Australian Energy Market Commission Establishment Act 2004 (SA) and the NEL. This is because when performing its functions under clause 3.14.6 of the Rules the AEMC is not empowered under the NEL or the Rules to decide whether or not information given to it in confidence by a claimant is, in fact, confidential information. In the absence of such a power, the AEMC has a statutory obligation to take all reasonable measures to protect information given to it in confidence.²⁵ The Commission advised the Panel of this situation on 7 May 2010 and requested it not to take into account section 4 of the compensation guidelines in its considerations. Therefore, the Commission accepts the confidentiality of Synergen Power's Annexures and all further information provided to support and substantiate its claim.

The Commission intends to commence the process to amend the compensation guidelines shortly, in accordance with the transmission consultation procedures²⁶, to ensure that the section on confidentiality is consistent with its legislative powers and obligations. The Commission also recognises that its obligation to protect all information provided to it in confidence in connection with compensation claims under clause 3.14.6 of the Rules may impact on future public consultation under that Rule. In particular, the Commission notes that broad confidentiality claims by claimants may prevent stakeholders from being able to comment effectively on the Panel's draft report or the AEMC's draft decision under clause 3.14.6 of the Rules.

In view of this, the Commission intends to initiate a review of clause 3.14.6 of the Rules to consider, amongst other things:

- the circumstances in which a claimant is eligible to make a claim, including the use of the term dispatch offer in clause 3.14.6(a) of the Rules;
- the role of the AEMC and the Panel in determining compensation;
- the role of the consultation process in the light of the limits on the AEMC's power to disclose information relating to compensation claims;
- publishing notification that a claim for compensation has been received;
- the flexibility of timing associated with the processing of compensation claims; and
- other concerns raised in submissions regarding the compensation recovery process which are beyond the scope of this compensation claim.²⁷

²⁵ As provided in section 24 of the AEMC Establishment Act and section 31 of the NEL.

²⁶ In accordance with NEL clause 3.14.6(f).

²⁷ Under section 45 of the NEL, the AEMC may conduct a review into the operation and effectiveness of the Rules.

2.5 Submissions received on draft documents

Consultation on the Commission's draft decision and the Panel's draft report closed on 21 July 2010. Two submissions were received within the consultation period - from AGL Sales Pty Limited and Origin Energy Limited.

In its submission, AGL disagreed with the Panel's and Commission's interpretation of the term "dispatch offer" when used in clause 3.14.6(a) of the Rules and considered that if Synergen Power's dispatch offer is varied by a rebid, then the rebid should be taken into account in assessing the eligible trading intervals for which compensation may be claimed. The concerns raised in AGL's submission are considered in section 3.3.

Origin Energy raised a number of concerns regarding the broader process for the recovery of compensation from market customers. More specifically:

- the classification of the compensation recovery amounts and how they are to be recovered from market customers;
- the potential risk exposure for market customers as they are unable to put an effective risk management strategy in place due to the unknown timing and amount of compensation to be recovered from time to time; and
- where compensation is payable, the direct impact the quantum of compensation and the timing of recovery has on market customers.

Origin Energy's first concern is addressed below. However, the Commission considers that Origin Energy's other concerns are beyond the scope of determining Synergen Power's compensation claim, and are best considered in the Commission's foreshadowed review of clause 3.14.6 of the Rules.

Appendix B summarises the issues raised in these submissions and the AEMC's responses to these issues.

2.5.1 Classification of compensation recovery process

The Commission's draft decision proposed that compensation be paid to Synergen Power in relation to this claim and the Commission notes Origin Energy's concerns regarding the classification of the compensation recovery amounts and how they are to be recovered from market customers.²⁸ As this is the first claim for compensation to be assessed under clause 3.14.6 of the Rules, it is also the first time compensation is payable under this clause.

Clause 3.15.10 of the Rules provides the formula for AEMO to recover the compensation payable from market customers in the region affected by the imposition of an administered price, calculated on a trading interval basis in proportion to their respective total energy consumed for that trading interval. Clause 3.15.10(c) of the

²⁸ Origin Energy submission, 21 July 2010, pp.1-2.

Rules also requires AEMO to include in preliminary and final settlement statements separate details of any compensation amounts payable by or to market participants within 15 business days of AEMO being notified by the AEMC that compensation is to be paid under clause 3.14.6 of the Rules.

To accommodate the above situation, AEMO advised that its Mid Year 2009 Wholesale Market Management Systems (MMS) Software Release included an upgrade to the wholesale market systems to support the payment and recovery of compensation due to APPs.²⁹ As a consequence, the tax invoices for affected market customers will include a line item of "compensation" under the "Taxable Supplies made by AEMO" section, indicating the amount of compensation to be levied on that market customer for compensation claims due to an APP.

²⁹ Consultation on this software release was undertaken in accordance with AEMO's IT Change Management Procedures Manual, available on its website.

3 Assessment of Synergen Power's claim

In assessing Synergen Power's claim for compensation, the Commission has had regard to:

- its responsibilities under clause 3.14.6 of the Rules;
- its powers under the NEL and the AEMC Establishment Act 2004 (SA);
- the compensation guidelines;
- the information and evidentiary documents provided by Synergen Power to support its claim for compensation, in accordance with the compensation guidelines;
- the information provided by AEMO, in accordance with the compensation guidelines;
- submissions received on the Panel's draft report and the Commission's draft decision; and
- the Panel's recommendations in its final report.

3.1 Market event

This claim for compensation relates to the application of the APC during an APP in South Australia that commenced on the 15:30 hours trading interval on 29 January 2009 and ceased on the 04:00 hours trading interval on 7 February 2009. For the purposes of this claim, this is the APP to which the claim relates.

3.2 Notification of intent to claim compensation

On 13 February 2009, Synergen Power provided notification of its intent to claim compensation in relation to this APP for its Port Lincoln and Snuggery generating units in South Australia. This notification was received within the prescribed timeframe in the Rules.³⁰

There were no compensation guidelines in place under clause 3.14.6(c) of the Rules when this notification of intent to claim compensation was received. As part of its notification, Synergen Power requested that processing of its claim be delayed until the compensation guidelines were made. The compensation guidelines, amongst other matters, set out the information that must be provided by a claimant to enable its compensation claim to be assessed by a three member panel and the AEMC. The panel makes recommendations to the AEMC on the claim, and the AEMC takes into

³⁰ NER clause 3.14.6(b).

consideration the recommendations of the panel in making its decision on the compensation claim.

3.3 Eligibility

Clause 3.14.6(a) of the Rules sets out the basis for compensation under clause 3.14.6 of the Rules as follows:

“Scheduled Generators may claim compensation from AEMO in respect of generating units if, due to the application of an administered price cap during either an administered price period or market suspension, the resultant spot price payable in respect of the dispatched generating units in any trading interval is less than the price specified in their dispatch offer for that trading interval.”

The Commission notes that:

- Synergen Power is registered with AEMO as a Scheduled Generator with respect to its scheduled generating units - the Port Lincoln Gas Turbine (2 x 25 MW) and Snuggery Power Station (3 x 21 MW);
- an APC applied during an APP in South Australia that commenced on the 15:30 hours trading interval on 29 January 2009 and ceased on the 04:00 hours trading interval on 7 February 2009; and
- Synergen Power’s scheduled generating units were dispatched during certain periods while the APC was in place.

The remaining criterion for eligibility for compensation under clause 3.14.6 of the Rules is that the spot price in any trading interval is less than the price specified in the dispatch offer for that trading interval.

As Synergen Power raises in its compensation claim and the Panel discusses in section 3.2 of its draft report, some clarification was needed on the term "dispatch offer" as used in clause 3.14.6(a) of the Rules. Synergen Power submitted that clause 3.14.6(a) of the Rules "should be read so that the reference to 'dispatch offer' in respect of a generating unit for a trading interval is a reference to the **original** dispatch offer for that trading interval prior to any variation of available capacity within price bands made in accordance with clause 3.8.22 and 3.8.22A of the Rules."³¹

The Panel agreed with Synergen Power that the term "dispatch offer" refers to "the original bid made in advance (the process as described in Clause 3.8.6), and that a

³¹ Synergen Power, Amended and Restated, and Further Amended and Restated, Submission of Particulars of a Claim dated 18 August 2009 pursuant to Paragraph (a) of Clause 3.14.6 of the National Electricity Rules, p.3.

subsequent rebid made in accordance with clause 3.8.22 does not alter the nature of the 'dispatch offer'.³²

In its draft decision, the Commission also considered the interpretation of the term "dispatch offer" in clause 3.14.6(a) of the Rules and concluded that the most appropriate interpretation of "dispatch offer" in clause 3.14.6(a) of the Rules is that rebids should not be included in the assessment of eligible trading intervals for which compensation may be claimed.

In its submission, AGL disagreed with the Panel's and Commission's interpretation of the term "dispatch offer" and considered that if Synergen Power's dispatch offer is varied by a rebid, then the rebid should be taken into account in assessing the eligible trading intervals for which compensation may be claimed.³³ The Panel has addressed AGL's concerns in specific detail in its final report.³⁴

The Commission acknowledges that there are differing views as to the objectives of clause 3.14.6 of the Rules and on the interpretation of clause 3.14.6(a) of the Rules. In particular, the Commission notes the differing views of the Panel and AGL on the appropriate balance to be struck between the importance of allowing the competitive market to operate normally to ensure that the objective of efficient pricing is met and the need to modify the operation of the market to ensure the objectives of reliability and security of supply are met.

However, having considered the phrase "the price specified in their dispatch offer" in clause 3.14.6(a) in the context of the Rules (including the relevant Chapter 10 definitions) and the interpretation provisions in Schedule 2 of the NEL, the Commission considers that the proper construction of that phrase is the price(s) specified in the original dispatch offer of the Scheduled Generator under clause 3.8.6 of the Rules. Under clause 3.8.22(a) of the Rules, the price(s) in a dispatch offer under clause 3.8.6 of the Rules are not and cannot be varied by any rebid.

On this basis, the Commission considers that a Scheduled Generator will be eligible for compensation under clause 3.14.6 of the Rules in circumstances where:

- an APC is applied during an APP or market suspension; and
- the spot price is less than a price specified in the scheduled generator's original dispatch offer under clause 3.8.6 of the Rules; and
- the Scheduled Generator's generating units are dispatched during the APP.

³² Expert Panel, Draft Recommendations to the Australian Energy Market Commission, Assessment of Synergen's Claim for compensation Pursuant to Clause 3.14.6 of the National Electricity Rules, 14 May 2010, section 3.2.

³³ AGL submission, 21 July 2010.

³⁴ Expert Panel, Final Recommendations to the Australian Energy Market Commission, Assessment of Synergen's Claim for compensation pursuant to Clause 3.14.6 of the National Electricity Rules, 18 August 2010, section 3.2.

In view of these conclusions, the Commission considers that Synergen Power is eligible to claim compensation in accordance with clause 3.14.6(a) of the Rules in respect of its Port Lincoln and Snuggery generating units during the APP in South Australia, for all the trading intervals which it generated electricity in accordance with dispatch instructions from AEMO.

The Commission recognises that the practical consequence of its interpretation of dispatch offer is that clause 3.14.6(a) of the Rules may be unlikely to provide a barrier to a claim for compensation.³⁵ The Commission intends to consider the eligibility criteria for generators claiming compensation, and in particular the use of the term dispatch offer in clause 3.14.6(a) of the Rules, as part of its review of clause 3.14.6 of the Rules. The concerns raised by AGL in its submission will be further considered as part of this review.

3.4 Direct costs

Synergen Power is claiming compensation for the direct costs it incurred during the APP. The direct costs were not itemised by trading interval, but provided as aggregate totals for the categories of cost identified in the compensation guidelines methodology - fuel costs, operation and maintenance, and ancillary services.

The Panel has scrutinised the costs incurred by Synergen Power in detail. Proportionate to the value of the costs being claimed, the Panel requested business documents to substantiate the calculation of these costs. The Commission is satisfied that the Panel's analysis of the direct costs has been very comprehensive. The Commission has reviewed and carefully considered the Panel's analysis and recommendation.

The Commission, therefore, accepts the Panel's recommendation of the total direct costs that should be paid to Synergen Power. The Commission notes that the Panel's recommendation on the amount of direct costs that should be payable to Synergen Power is equal to the amount claimed by Synergen Power less a small deduction for labour costs that the Panel was unable to verify.

3.5 Opportunity costs

Synergen Power is not claiming any opportunity costs.

3.6 Spot market income

The Panel has reviewed the spot market income claimed by Synergen Power, and confirmed this income value with information provided by AEMO. There was a small

³⁵ The Commission notes that the process for determining the quantum of compensation under clause 3.14.6 of the Rules operates separately from the mechanism for determining eligibility and just because a scheduled generator is able to claim compensation does not mean that the amount of compensation payable will be greater than zero.

discrepancy in the spot market income for a total of five half-hour periods for Snuggery, which Synergen Power has clarified are not being claimed. Based on the Panel's recommendation, the Commission accepts that spot market income of \$312 718.09 was paid to Synergen Power during the relevant APP.

3.7 Financing costs

Synergen Power is claiming both initial financing costs and further financing costs, based on its calculated Total Claimable Amount³⁶. The initial financing costs are claimed for the period commencing on the first day after the end of the APP (i.e. 8 February 2009) and ending on the date that the final information to support its claim was submitted (i.e. 31 March 2010, being the date that Synergen Power submitted its final particulars in support of its claim). The further financing costs are claimed for the period commencing on the day after the final information to support its claim was submitted (i.e. 1 April 2010) and ending on the day the claimant is paid compensation (expected to be 1 October 2010).

Section 10.7.1 of the compensation guidelines provides for "reasonable financing costs in respect of the passage of time between the event occurring to which the compensation claim relates and any compensation being awarded... In determining such costs, the Commission would also take into account any unreasonable delays from the claimant in providing the necessary information to commence assessment of the claim for compensation, or responding to requests for clarification or additional information from the panel or the Commission."³⁷

The Commission notes the Panel's comments that Synergen Power should be allowed to recover in full the initial financing costs, as recalculated by the Panel. The Commission recognises that this is the first compensation claim it has assessed under clause 3.14.6 of the Rules, and there has been some uncertainty in the practical application of the process as well as delays in receiving the necessary detailed documentation to substantiate the claim. The Commission accepts that this first process has been a learning experience for all parties, and accepts that Synergen Power needed the time taken following requests for additional information to assemble the evidentiary documents requested. The Commission has decided to allow financing costs to Synergen Power as part of its compensation claim.

The Panel considered an alternate approach to determining the starting date for accruing initial financing costs, but concluded by accepting Synergen Power's approach. The Panel also accepted the end date for the calculation of the initial financing costs. The Panel then calculated its recommended initial financing costs based on the slightly lower total direct costs it recommended should be allowed (see section 3.4) less the total spot market income paid to Synergen Power. The Commission considers the Panel's recommendation to be well reasoned and accepts the total initial financing costs calculated by the Panel.

³⁶ As calculated in accordance with section 10.1 of the compensation guidelines.

³⁷ Compensation guidelines, section 10.7.1, p.16.

Given the timetable provided in the Rules for publication of the Commission's final decision on this claim, and AEMO's 2010 settlement calendar, the expected settlement date for compensation payable to Synergen Power is 1 October 2010. Based on this settlement date and assuming that the applicable interest rate remains unchanged, the Panel has calculated its recommended further financing costs based on the slightly lower total direct costs it recommended should be allowed less the total spot market income. As discussed in the Commission's draft decision, the Commission accepted the Panel's recommended methodology for calculating this amount. The Panel has applied this methodology to calculate the further financing costs.

It should be noted that in calculating the further financing costs, the Commission has confirmed and used the applicable interest rate, as at 30 August 2010, to enable it to finalise and advise AEMO of the total compensation payable by trading interval, for inclusion in week 36 of the NEM settlement calendar. Any interest rate movements between 30 August 2010 and the settlement date is unable to be taken into account. Accordingly, the Commission has decided to allow the total further financing costs calculated by the Panel, up to the settlement date of 1 October 2010.

3.8 Any other compensation

Synergen Power advised that it has not made, and is not considering making, any other claims for compensation under the Rules during the APP for which this claim relates. AEMO has confirmed that there are no directions, and hence no possible claims for compensation, that relate to the claimant during this APP.

3.9 Recovery of costs

In assessing Synergen Power's compensation claim, the Commission decided on the principles it will apply in exercising its discretion to recover processing and administrative costs from a claimant.³⁸ Where the Commission considers that a compensation claim is not well-founded or where the conduct of the claimant has not supported an efficient process for resolving the claim, the external costs of processing the claim for compensation, namely the Panel's costs, will be shared equally with the claimant. The Commission considers that these principles are consistent with the intent of clause 3.14.6 of the Rules.

The Commission advised Synergen Power of these principles on 23 October 2009 and sought confirmation from Synergen Power that it was willing to accept the application of these principles before processing of the claim proceeded. Synergen Power advised on 27 November 2009 that it accepted these principles, but requested an opportunity to make a submission if any costs are to be recovered from it. The Commission confirmed that at the end of the process for assessing its claim for compensation, if the Commission considers that any processing and administrative costs should be recovered from Synergen Power, it will be advised and given an opportunity to make a submission on those costs.

³⁸ As provided by NER clause 3.14.6(q).

The Commission is mindful of the purpose of paying compensation under clause 3.14.6 of the Rules and Synergen Power's participation during the APP which, AEMO advised, contributed to the reliable operation of the NEM during this high stress event. The Commission also recognises that this is the first compensation claim it has assessed under clause 3.14.6 of the Rules, and that there has been some uncertainty in the practical application of the process and the extent of detailed documentation needed to substantiate the claim. The Commission has also taken into account Synergen Power's submission on this matter, as well as the Panel's views on whether costs should be recovered. The delays in receiving sufficient information from Synergen Power to assess the claim and the additional Panel costs incurred have also been considered.

Having taken these factors into account, the Commission does not, in this case, intend to recover costs from Synergen Power for this compensation claim. For future compensation claims, the recovery of costs will be assessed on a case-by-case basis, having regard to the principles outlined above.

4 Conclusions

In relation to Synergen Power's compensation claim, clause 3.14.6(n)(2) of the Rules requires the Commission to make its final decision on whether:

- compensation should be payable by AEMO in relation to Synergen Power's compensation claim; and
- if so, the amount of compensation that should be paid.

4.1 Should compensation be payable?

The Commission has decided that compensation is payable by AEMO in relation to Synergen Power's compensation claim.

The Commission is satisfied that:

- Synergen Power is eligible to claim compensation in respect of its Port Lincoln and Snuggery generating units during the APP in South Australia between the 15:30 hours trading interval on 29 January 2009 and the 04:00 hours trading interval on 7 February 2009, for all the trading intervals which it generated electricity in accordance with dispatch instructions from AEMO;
- Synergen Power notified the AEMC and AEMO of its intention to claim compensation in accordance with clause 3.14.6(b) of the Rules;
- the information provided by Synergen Power to support and substantiate its claim complies with the compensation guidelines;
- the direct costs claimed by Synergen Power are consistent with the categories of cost permitted in the compensation guidelines;
- the proposed methodology applied by Synergen Power to calculate compensation is consistent with the compensation guidelines; and
- the payment of compensation to Synergen Power in relation to this APP is consistent with the objective of paying compensation to maintain the incentive for scheduled generators to invest in plant that provides services during peak periods and to supply energy and other services during an APP.

4.2 Amount of compensation that should be paid?

The Commission has decided that Synergen Power should receive total compensation of \$130 486.94 in respect of its claim, based on a settlement date of 1 October 2010.

This total compensation amount is calculated by:

- taking the total direct costs incurred by Synergen Power, as calculated by the Panel; and
- deducting the spot market income received i.e. \$312 718.09;
- which gives the net claimable amount; and
- then adding the initial financing costs, as calculated by the Panel up to 31 March 2010;
- which gives the initial compensable amount; and
- then adding the further financing costs, as calculated by the Panel up to the settlement date of 1 October 2010;
- which gives the total compensable amount of \$130 486.94.

The Commission will write to AEMO to advise of the total compensation amount payable to Synergen Power in relation to this compensation claim, and provide AEMO with the total amount of compensation payable, by generating unit, for each relevant trading interval within the APP.

Abbreviations

| | |
|-------------------------|--|
| AEMC | Australian Energy Market Commission |
| AEMO | Australian Energy Market Operator Limited |
| APC | Administered Price Cap |
| APP | administered price period |
| Commission | See AEMC |
| compensation guidelines | The Determination of Compensation Following the Application of the Administered Price Cap, Market Price Cap, Market Floor Price or Administered Floor Price Guidelines |
| CPT | Cumulative Price Threshold |
| MMS | Market Management Systems |
| MPC | Market Price Cap |
| NEL | National Electricity Law |
| NEM | National Electricity Market |
| NEMMCO | National Electricity Market Management Company Limited |
| NER | National Electricity Rules |
| Panel | A three member panel selected from the group of persons available to be appointed to the Dispute Resolution Panel |
| Rules | See NER |

A Chronology of the compensation assessment process

The following table sets out the timing of Synergen Power's compensation assessment process.

| Date | Event |
|--|---|
| 15:30 hours 29 January 2009 to 04:00 hours 7 February 2009 | An APC is applied in South Australia. |
| 13 February 2009 | Synergen Power provides notification of its intent to claim compensation in relation to the APC applied in South Australia for its Port Lincoln and Snuggery generating units. |
| 1 July 2009 | The Determination of Compensation Following the Application of the Administered Price Cap, Market Price Cap, Market Floor Price or Administered Floor Price Guidelines (compensation guidelines) commences. |
| 28 July 2009 | AEMC requests that the Dispute Resolution Adviser establish a three member panel to assess Synergen Power's compensation claim. |
| 18 August 2009 | Synergen Power provides information to support its compensation claim, having regard to the compensation guidelines. |
| 25 September 2009 | Three member panel comprising Geoff Swier (Chair), Sibylle Krieger and Bob Graham engaged to assess the compensation claim. |
| 23 October 2009 | AEMC advises Synergen Power of the Commission's principles that it will apply in exercising its discretion to recover costs from a claimant. Synergen Power to advise whether it accepts these principles before claim can proceed. |
| October/November 2009 | Panel advises that the information provided by Synergen Power is insufficient to assess the claim. Additional information requirements to support the claim were discussed between the Panel and Synergen Power. |
| 27 November 2009 | Synergen Power accepts the Commission's principles for exercising its discretion to recover costs from a claimant, but requests an opportunity to make a submission if any costs are to be recovered from it. |
| 4 December 2009 | AEMC requests Synergen Power to provide additional information and documents, as discussed with the Panel, to substantiate its claim. |
| 6 January 2010 | AEMC requests Synergen Power to advise when the additional information and documents requested on 4 December 2009 will be provided. |

| Date | Event |
|------------------|---|
| 27 January 2010 | Synergen Power advises that the additional information and documents will be provided on 12 February 2010. |
| 12 February 2010 | Synergen Power provides the additional information and documents in accordance with the AEMC's request of 4 December 2009. |
| 19 February 2010 | Panel advises that the information provided by Synergen Power is still insufficient to assess the claim. AEMC requests further additional information from Synergen Power, to be provided by 12 March 2010. |
| 12 March 2010 | Synergen Power provides further additional information to support its claim, in accordance with the AEMC's request of 19 February 2010. |
| 24 March 2010 | Panel advises that the information provided by Synergen Power is now sufficient to assess the claim. The compensation assessment process formally commences on this date. |
| 31 March 2010 | Consistent with the information provided previously, Synergen Power formally provides its further amended and restated Submission of Particulars of the Claim. |
| 15 April 2010 | Panel advises Synergen Power that there is an arithmetic error in its calculation of the compensation amount in its further amended and restated Submission of Particulars of the Claim. Opportunity is provided for Synergen Power to submit a version of its further amended and restated Submission of Particulars of the Claim correcting this error. |
| 19 April 2010 | Synergen Power provides a new version of its further amended and restated Submission of Particulars of the Claim, correcting the arithmetic error - still dated 31 March 2010. |
| 7 May 2010 | AEMC advises the Panel that section 4 of the compensation guidelines is inconsistent with the AEMC's obligations to protect confidential information under the AEMC Establishment Act and the NEL, and requests the Panel not to take into account this section of the compensation guidelines in its considerations. |
| 14 May 2010 | Panel provides its draft report to the AEMC. |
| 23 June 2010 | The Commission publishes its draft decision and the Panel's draft report for consultation. |
| 21 July 2010 | Submissions close on the draft documents. Two submissions were received, from AGL and Origin Energy. |
| 18 August 2010 | Panel provides its final report to the AEMC. |

B Summary of issues raised in submissions

Consultation on the compensation claim from Synergen Power Pty Ltd closed on 21 July 2010. Two submissions were received. The key issues raised in the submissions, and the AEMC's responses to these issues, are summarised in the following table.

| Stakeholder | Issue ³⁹ | AEMC response |
|-------------|---|---|
| AGL | <p>AGL does not share the Commission's view that there is ambiguity in the term "dispatch offer" in clause 3.14.6(a). (p.2.)</p> <p>In accepting the Panel's recommendation in its draft decision the Commission is proposing a significant change to the Rules outside the normal Rule change process by accepting a compensation claim based on a change to the definition of the term "dispatch offer" which is to apply during an APP. (p.2.)</p> | <p>Comments have been noted. This issue has been addressed in section 3.3 of this report and will be further considered in the Commission's foreshadowed review of clause 3.14.6 of the Rules.</p> <p>The AEMC does not consider that its interpretation of "dispatch offer" constitutes a change of the Rules.</p> |
| AGL | <p>Whether or not the compensation provisions provide sufficient incentive for generators to operate during an APP is a separate issue that could be considered by the Commission in a review of clause 3.14.6. (p.2.)</p> | <p>Comments have been noted. This issue will be considered in the Commission's foreshadowed review of clause 3.14.6 of the Rules.</p> |
| AGL | <p>Supports the Commission's proposal to review the confidentiality provisions to address the information asymmetry between claimants and Market Participants who are paying the compensation. The confidentiality provisions make it difficult to determine the basis for and the quantum of the claim. (p.2.)</p> | <p>Comments have been noted. This issue will be further addressed in the Commission's foreshadowed review of clause 3.14.6 of the Rules.</p> |

³⁹ Page numbers refer to page numbers in the stakeholder's submission.

| Stakeholder | Issue ³⁹ | AEMC response |
|---------------|---|---|
| Origin Energy | Supports the market design that enables the recovery of costs during administered price periods, like that experienced in South Australia between 29 January and 7 February 2009. This mechanism provides a risk management and investment incentive mechanism for generators operating in market stress periods. (p.1.) | Comments have been noted. |
| Origin Energy | The Rules, compensation guidelines and AEMO procedures provide retailers and other Market Customers with little or no clarity or guidance around the classification of the compensation recovery amounts. These documents do not state explicitly the nature of the cost or fee that AEMO charges the relevant Market Customers. At this stage, retailers know they may face a new cost, but the arrangements are not clear as to whether or not retailers can pass these costs on to customers. (p.1.) | Comments have been noted. The classification of the compensation recovery process is further addressed in section 2.5.1 of this report. Consideration of the pass through of these costs is beyond the scope of this decision. |
| Origin Energy | The potential risk exposure could be significant. First, retailers are unable to forecast, hedge or directly influence administered price events. Putting an effective risk management strategy in place is thus challenging when the exposure to generator compensation is unknown. Second, there is no cap on the level of compensation that the AEMC could award. This leaves retailers exposed to funding an unknown amount of compensation over which they have no control or an explicit cost recovery mechanism. (pp.1-2.) | Comments have been noted but are beyond the scope of this decision. This issue may be relevant to the Commission's foreshadowed review of clause 3.14.6 of the Rules. |
| Origin Energy | When determining the level of compensation, the AEMC needs to consider explicitly the direct impact on Market Customers. In highly competitive energy markets margins are already slim so a large compensation amount could erase several months of normal margin. (p.2.) | Comments have been noted but are beyond the scope of this decision. |