



Australian Energy Market Commission

## FINAL DECISION

Establishment of Guidelines for the Determination of Compensation Following the Application of the Administered Price Cap, Market Price Cap, Market Floor Price or Administered Floor Price

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GUIDELINES

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## **About the AEMC**

The Council of Australian Governments, through its Ministerial Council on Energy, 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 policy advice covering the National Electricity Market and elements of the natural gas markets. It is a statutory authority. 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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## Abbreviations

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
APC	Administered Price Cap
Commission	see AEMC
CPT	Cumulative Price Threshold
EUAA	Energy Users Association of Australia
MCE	Ministerial Council on Energy
MPC	Market Price Cap
NEL	National Electricity Law
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
NGF	National Generators Forum
Rules	National Electricity Rules
SRMC	Short Run Marginal Cost
VoLL	Value of Lost Load

## Summary

In establishing the guidelines for *The Determination of Compensation Following the Application of the Administered Price Cap, Market Price Cap, Market Floor Price, or Administered Floor Price* the Commission has undertaken the process prescribed by the transmission consultation procedures (rule 6A.20 of the National Electricity Rules) and considered the report of the expert panel and the submissions received during consultation. This document discusses the processes undertaken and the Commission's considerations in making the first compensation guidelines.

The guidelines for *The Determination of Compensation Following the Application of the Administered Price Cap, Market Price Cap, Market Floor Price or Administered Floor Price* is a separate document available on the Commission's website.

The Commission recognises the important role the compensation guidelines play in the decision-making process. In assessing a claim for compensation, a three member panel, as required by the Rules, will apply the guidelines when providing advice to the Commission on whether compensation should be paid and the amount of compensation. The Commission will then apply the guidelines when determining those questions, unless it is satisfied there are compelling reasons not to do so.

In developing the first compensation guidelines, the Commission has been mindful of the substantive comments raised by interested parties in submissions. In addition, the Rules require the Commission to specifically consult with a three member panel in developing the guidelines.

The Commission has also had regard to the national electricity objective in developing these compensation guidelines. The Commission considers the additional detail provided by the guidelines in relation to the information to be provided and which costs may be included in a compensation claim provides interested parties, including claimants, with greater predictability, consistency and transparency in the calculation of compensation. This, in turn, would promote efficient investment in electricity services and regulatory certainty for the benefit of consumers. The payment of compensation also promotes greater reliability and security in the national electricity market by maintaining the incentive for supplying electricity during high stress events, such as administered price periods

The Commission considers the guidelines, developed through the transmission consultation procedures, to be practical and informative, yet sufficiently flexible for all participants in the compensation process.

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# 1 Purpose of the guidelines and Rules provisions

## 1.1 Purpose

The administered price period provisions in the National Electricity Rules (Rules) form an important component of the market safety net which operates to protect and sustain electricity trading during periods of sustained high prices in the spot market. If market prices in a region rise to, and are sustained at, levels which are likely to cause substantial financial stress, then those prices are capped until they return to lower levels. When the sum of the spot prices in a single region for the previous 336 half hourly trading intervals (i.e. seven days) reaches the cumulative price threshold (CPT), currently set at \$150 000, an administered price period is triggered. This is equivalent to an average spot price of \$446.43/MWh over the previous seven days, or fifteen half hourly trading intervals at the market price cap (currently set at \$10 000/MWh) within a seven day period. The administered price cap (APC) is currently set at \$300/MWh for all regions at all times; and the administered price floor is the negative of the APC.

Compensation may be payable following such events in recognition of the regulatory risk involved and to ensure that participants are not disadvantaged by continuing to participate in the market during high stress periods, such as an administered price period or other event.

The guidelines for *The Determination of Compensation Following the Application of the Administered Price Cap, Market Price Cap, Market Floor Price or Administered Floor Price* play an important role in the decision-making process.

A three member panel<sup>1</sup> (panel) applies the guidelines when providing advice to the Commission on whether compensation should be paid and the amount of compensation. The Commission also applies the guidelines when determining those questions, unless it is satisfied there are compelling reasons not to do so.

With the guidelines in place, potential claimants will have greater certainty as to the process to apply and what costs will be considered for compensation, and can then make an informed decision on whether they should apply for compensation and what information needs to be provided.

In addition, application of the guidelines will provide transparency and consistency in the consideration of any compensation claims and the determination of any amount payable. This should also improve the Commission's consultation process when considering a compensation claim through better informed stakeholders providing submissions on the panel's draft report and Commission's draft decision on a claim. This will support robust decision-making by the Commission on any compensation claims.

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<sup>1</sup> As established under clause 3.14.6(g) of the Rules.

## 1.2 Rules provisions

Clause 3.14.6(c) of the Rules requires the Commission to develop and publish compensation guidelines, in accordance with the transmission consultation procedures contained in rule 6A.20 of the Rules.

The Rules require that the compensation guidelines:

- identify the objectives for the payment of compensation;
- require that the amount of compensation be based on costs directly incurred by the claimant and the value of any opportunities foregone;
- outline the methodology to be used to calculate the amount of any compensation payable; and
- set out the information requirements AEMO<sup>2</sup> and the claimant must provide.

In developing the compensation guidelines, the Commission has also had regard to the National Electricity Objective<sup>3</sup>. The Commission considers the higher level of prescription in relation to the information to be provided and which costs may be included in a compensation claim provides interested parties, including claimants, with greater predictability, consistency and transparency in the calculation of compensation. This, in turn, would promote efficient investment in electricity services and regulatory certainty for the benefit of consumers. The payment of compensation also promotes greater reliability and security in the national electricity market (NEM) by maintaining the incentive for supplying electricity during high stress events, such as administered price periods.

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<sup>2</sup> Prior to 1 July 2009, these responsibilities applied to the National Electricity Market Management Company (NEMMCO).

<sup>3</sup> Section 7 of the National Electricity Law.

## 2 Consultation

The National Electricity Amendment (Compensation Arrangements under Administered Pricing) Rule 2008 No. 17 commenced on 1 January 2009 and requires the Commission to develop and publish compensation guidelines (clause 3.14.6(c)). The compensation guidelines must be developed in accordance with the transmission consultation procedures (rule 6A.20) and the first compensation guidelines must be published by 30 June 2009 (clause 3.14.6(e)).

Clause 3.14.6(d) of the Rules requires the Commission to request the Dispute Resolution Adviser to establish a three person panel to assist it in developing the compensation guidelines. The panel convened to assist the Commission on these guidelines comprised Mr Greg Thorpe, Mr Geoff Swier and Mr Jim Truesdale.

On 5 March 2009, the Commission published its proposed compensation guidelines and explanatory statement, and invited submissions on the proposed guidelines by 21 April 2009.

The Commission received the report of the expert panel and six submissions from:

- EnergyAustralia;
- Energy Users Association of Australia (EUAA);
- International Power;
- National Generators Forum (NGF);
- NEMMCO; and
- TRUenergy.

The Commission is also mindful that the Rules require that a panel be established to provide advice to the Commission on any claims for compensation. In providing its advice to the Commission, the panel must apply the guidelines<sup>4</sup>, so the ease of application and interpretation of the guidelines is particularly relevant for this stakeholder.

The substantive comments raised in submissions are addressed in section 3 of this document.

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<sup>4</sup> Clause 3.14.6(l) of the Rules.

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### **3 Commission’s reasoning in making the guidelines**

In establishing the first compensation guidelines, the Commission has considered the substantive comments raised by the expert panel and in submissions. In accordance with rule 6A.20(f) of the Rules, this section discusses each substantive issue raised and the Commission’s consideration of that issue.

In this section, we step through the contents of the guidelines and explain the Commission’s reasoning for any changes to the proposed guidelines, in light of the expert panel’s report, submissions and any issues identified by the Commission.

#### **3.1 Commencement date**

In the proposed guidelines, the commencement date was listed as 1 July 2009.

One submission<sup>5</sup> raised a concern that the “commencement date should apply retrospectively to existing compensation claims”, as “there has been at least one event leading to a compensation claim... before the likely commencement date of the guidelines”.

It is not appropriate to “back date” the commencement date of the guidelines for them to be able to be applied to an event that occurred prior to their commencement. The guidelines have no impact on the submission of a notice of intention to make a compensation claim, as required by clause 3.14.6(b) of the Rules. The guidelines are only relevant to the information that must be provided to the panel, and the recommendations of the panel and the determination of the Commission in relation to a compensation claim.

A person who intends to make a claim for compensation is required to notify AEMO and the AEMC.<sup>6</sup> The process to determine compensation commences when the claimant has provided the information necessary under the guidelines to enable its claim to be assessed.

Accordingly, the commencement date for the guidelines remains as 1 July 2009.

#### **3.2 Ongoing review**

In the proposed guidelines, the ongoing review of the guidelines was not explicitly addressed.

Although no submissions raised this issue, the Commission has amended the guidelines to clarify that the Commission intends to review the guidelines every three years, or at an earlier time in light of market circumstances. Clause 3.14.6(f) of the Rules provides that the Commission may amend or replace the compensation

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<sup>5</sup> NGF p. 1.

<sup>6</sup> Clause 3.14.6(b) of the Rules.

guidelines, from time to time, in accordance with the transmission consultation procedures.

### **3.3 Confidentiality**

In the proposed guidelines, in recognition that there may be confidential information provided by a claimant for compensation, the Commission's overall processes regarding the treatment of confidential information was included.

The expert panel<sup>7</sup> suggested that "exposing the details of a claim to wider scrutiny should help to counter the possibility of misleading information or inflated claims and provide greater assurance to the Commission before making a final decision".

The Commission acknowledges that there may be benefit in such behaviour, but is mindful of the treatment of confidential information. As such, the section of the guidelines on confidentiality has been expanded to clarify the Commission's considerations when determining whether to publish confidential information.

The guidelines clarify that for a claimant, the Commission may still consider it necessary to disclose confidential information in the panel's reports or the Commission's decisions, to give stakeholders an opportunity to make submissions on the claimant's claim. However, the guidelines outline the process that would be followed if disclosure of such information was considered necessary. A claimant may choose to withdraw such confidential information, but the Commission will no longer be able to consider it as part of its assessment process on the claim.

In the event that confidential information is provided in a submission on the panel's draft report or the Commission's draft decision, the guidelines discuss the process that would be followed, depending on whether such a claim of confidential information is substantiated.

The Commission considers the expansion of this section of the guidelines better manages the expectations of all parties participating in the compensation process.

### **3.4 Objectives of paying compensation**

In the proposed guidelines, those clauses of the Rules relating to the objectives of paying compensation were cited.

A number of submissions<sup>8</sup> requested clarification as to how the guidelines address the "incentive to invest" when compensation is based on costs directly incurred and opportunities foregone i.e. for many participants, there is likely to be no contribution to the cost of investment.

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<sup>7</sup> Expert Panel, p. 3.

<sup>8</sup> Expert Panel, p. 5; NGF p. 2; International Power p. 4.

The Commission notes that this compensation regime is just one component of the market's broader Market Price Cap (MPC)<sup>9</sup>-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.

Compensation may be payable after a number of hours in which sustained high spot market prices (possibly up to the MPC) breach the CPT and result in an administered price period in a region. These high spot market prices, together with the levels at which the CPT<sup>10</sup> and APC<sup>11</sup> have been set, are considered to provide the necessary investment signals to participants.

The payment of compensation is also intended to recognise this regulatory risk that participants may face in the market. It also ensures that participants are not disadvantaged by continuing to participate in the market during high stress periods, such as an administered price period or other event. The payment of compensation contributes to these investment signals, as part of this broader mechanism when operated together.

It should be noted that, in setting the APC at \$300/MWh, the Commission determined that:

“This APC level is significantly higher than the short run marginal costs (SRMCs) of most generators in the NEM. The APC level is therefore effective in minimising the distortion of the incentive for supply participation during an extreme market event, when the APC is triggered.

An APC level of \$300/MWh is likely to mitigate the frequency and magnitude of compensation because: (a) the APC level is not significantly lower than the highest estimated SRMC in the NEM; and (b) the total generation capacity, with estimated SRMCs above the APC level, is assessed by the Commission to be minor compared to the total generation capacity in the NEM.”<sup>12</sup>

This compensation scheme seeks to minimise interference in the market with the APC set significantly above SRMC and aims to provide adequate compensation to participants who either forgo significant opportunities or incur higher than normal costs.

Further detail has been provided in the guidelines to explain how the incentive to invest is not explicitly provided through the payment of compensation, but rather through the broader market context in which compensation may be payable.

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<sup>9</sup> Formerly known as the Value of Lost Load (VoLL).

<sup>10</sup> Clause 3.14.1(c) of the Rules sets this at \$150 000/MWh, but this will increase to \$187 500 on 1 July 2010 (as a result of the *National Electricity Amendment (NEM Reliability Settings: VoLL, CPT and Future Reliability Review) Rule 2009 No. 13* made on 28 May 2009).

<sup>11</sup> Currently set at \$300/MWh for all regions at all times.

<sup>12</sup> AEMC, *Determination of Schedule for the Administered Price Cap*, 20 May 2008, p. vii.

### 3.5 Principles

In the proposed guidelines, those clauses of the Rules relating to the principles of the guidelines were cited.

Two submissions<sup>13</sup> raised concerns that the wording of the principles would result in no compensation being paid because the event directly affects revenues, not costs, and the principles refer to costs alone. Another submission<sup>14</sup> raised concerns on the inclusion of opportunity costs foregone in the methodology to calculation compensation.

The Commission acknowledges that the wording in the Rules, and hence in the guidelines, could be more precise. The appropriate interpretation, as clarified in the basic formula for compensation (section 10.1 of the guidelines), is that the basis for compensation should be the extent to which costs exceed revenues during the relevant trading intervals .

The basis on which compensation is to be calculated was addressed in an earlier Rule change process initiated by EnergyAustralia. Prior to the Rule change, compensation was based on an assessment of a “fair and reasonable” amount of compensation. As part of its considerations, the panel was required to take into account the difference between the participant’s dispatch offer/bid price and the administered price. In amending the Rules<sup>15</sup>, the Commission determined that compensation based on a participant’s direct and opportunity costs would be more cost reflective of the participant’s short run marginal costs.

The Commission has amended the wording of the principles in the guidelines to clarify how the guidelines apply in practice.

### 3.6 Eligibility

In the proposed guidelines, those clauses of the Rules relating to parties eligible to apply for compensation were cited.

One submission<sup>16</sup> requested clarification on whether a partial compensation claim would be considered, if it was not practical for the participant to fully comply with a NEMMCO<sup>17</sup> dispatch instruction.

The Commission considers that, where the claimant is complying with an AEMO dispatch instruction, in good faith, and an unforeseeable/bona fide physical failure occurred so that the claimant was not fully able to comply with the dispatch instruction, that claimant should be able to claim compensation for those trading

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<sup>13</sup> NGF, p. 2; International Power, p. 3.

<sup>14</sup> EnergyAustralia, pp. 2-3.

<sup>15</sup> AEMC, *National Electricity Amendment (Compensation Arrangements Under Administered Pricing) Rule 2008*, Rule Determination, 18 December 2008.

<sup>16</sup> Expert Panel, p. 4.

<sup>17</sup> On 1 July 2009, NEMMCO transitioned into AEMO.

intervals that the claimant was able to comply. However, the Commission considers that the repair costs of such a physical failure are not to be included in the compensation claim.

The Commission considers that the guidelines provide sufficient flexibility to already address such a situation. The onus is on the claimant to provide sufficient evidence to support such a claim.

### **3.7 Information requirements**

In the proposed guidelines, the information considered necessary from the claimant and NEMMCO to consider any claim of compensation was listed.

One submission<sup>18</sup> raised concerns that the wording in the information requirements were not reflective of the dispatch process in reality, and another submission<sup>19</sup> raised concerns that there may be multiple compensation claims for the same activity. NEMMCO<sup>20</sup> also suggested additional information that it should provide to the Commission, in considering a claim, and the form of the information the Commission provides to NEMMCO if compensation is payable.

The Commission has modified the information requirements to be consistent with the amended wording of the principles of the guidelines.

The Commission understands that there is the possibility for a claimant to lodge multiple compensation claims for the same activity, i.e. under this compensation regime as well as for compensation under the Directions process<sup>21</sup>. The Rules do not preclude this possibility. However, the payment of compensation under the Directions process is intended to offset losses incurred by a participant for forcing it to a different dispatch quantity from the one it would have otherwise delivered. Compensation under this regime is intended to offset losses associated with a different price outcome that a participant is subject to once an administered price period occurs. It would be inconsistent with the objectives of paying compensation, and the national electricity objective itself, for compensation to be paid twice.

To address this, the Commission will request the claimant provide details of any compensation claim arising out of the event that it has been paid, that it has made, or that it is considering making, as part of its information requirements. The Commission will also request information from AEMO on any directions issued to the claimant in the relevant trading intervals for which compensation is being sought. The guidelines also specifically enable the Commission to consider the value of any other sources of compensation that a claimant may receive, in relation to the same events and which covers the same costs and opportunities foregone as in its claim.

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<sup>18</sup> NGF, p. 2.

<sup>19</sup> NEMMCO, p. 1.

<sup>20</sup> NEMMCO, pp. 1-2.

<sup>21</sup> Clause 3.15.7 of the Rules.

In addition, the Commission considers that additional information as suggested by NEMMCO<sup>22</sup> should be included in any compensation claims. The Commission recognises that, given its role in the NEM, AEMO is well placed to identify the information that the system operator may provide to assess a compensation claim.

Furthermore, the Commission recognises that the Rules require AEMO to recover the costs of any compensation to be paid from all market customers in the affected region, by relevant trading interval.<sup>23</sup> To assist AEMO in its cost recovery process, the Commission will provide the details of any compensation to be paid, by relevant trading interval, to AEMO.

The information requirements in the guidelines have been amended to reflect these changes.

### 3.8 Treatment of scheduled load

In the proposed guidelines, the calculation of compensation for scheduled loads was not explicitly addressed.

Three submissions<sup>24</sup> raised concerns that compensation for scheduled loads was not clearly addressed in the guidelines.

In considering these comments, the Commission notes that the eligibility criteria for scheduled loads to apply for compensation is “due to the application of an *administered floor price* during either an *administered price period* or *market suspension*, [where] the resultant *spot price* in any *trading interval* is greater than the price specified in the *dispatch bid* for that *trading interval*.”<sup>25</sup>

In the Australian Competition and Consumer Commission’s (ACCC’s) electricity authorisation determination on this issue, the proposed changes to the then National Electricity Code, were intended to “provide for negative administered prices, based on arrangements that precisely mirror the ceilings represented by the administered price cap at the top end of the market”.<sup>26</sup> In making its determination on a negative price floor, the ACCC argued that “customers are denied the market benefits of negative prices at times of very low demand. In a market where customers are exposed to positive pricing outcomes in times of high demand there is generally no justification for asymmetry in the rare event of a negative price outcome.”<sup>27</sup>

The Commission, therefore, interprets this clause to be related to those events when a scheduled load is being paid to consume electricity, i.e. the scheduled load has specified a negative price in its dispatch bid which is less than the administered floor

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<sup>22</sup> Now AEMO from 1 July 2009.

<sup>23</sup> Clause 3.15.10 of the Rules.

<sup>24</sup> Expert panel, p. 12 and p. 14; NGF, p. 3; International Power, p. 3.

<sup>25</sup> Clause 3.14.6(a2) of the Rules. The italicised terms have the same meaning as defined in the Rules.

<sup>26</sup> ACCC, Determination – VoLL, Capacity Mechanisms and Price Floor, 20 December 2000, p. 58.

<sup>27</sup> ACCC, Determination – VoLL, Capacity Mechanisms and Price Floor, 20 December 2000, p. 59.

price. So compensation relates to a scheduled load consuming electricity, in accordance with dispatch instructions, but being paid less for each MW it consumes than its dispatch bid. Hence compensation may be payable for the scheduled load's direct costs of not being paid enough to recover its costs for the energy it is consuming. In practice, it appears unlikely that a scheduled load would satisfy this eligibility criteria. However, the Rules do not provide for compensation to be payable to a scheduled load for any foregone production as a result of its demand side response to high (positive) spot prices during an administered price period or market suspension.

The guidelines have been amended to separately include the calculation of compensation for scheduled loads, as far as the Rules allow, for the events discussed above.

### **3.9 Treatment of Scheduled Network Service Providers**

In the proposed guidelines, the calculation of compensation for scheduled network service providers was not explicitly addressed.

Although no submissions raised concerns on this issue, the Commission has amended the guidelines to separately include the calculation of compensation for scheduled network service providers.

The calculation of compensation for scheduled network service providers is restricted to direct costs that relate to its loss of revenue as a consequence of the application of an administered price cap, market price cap, market floor price or administered floor price (as the case may be). It may also include counter-price flows.

### **3.10 Calculation of direct costs**

In the proposed guidelines, categories of direct costs that may be included in the calculation of compensation were provided.

Four submissions<sup>28</sup> provided comments on the various categories of direct costs eligible for compensation. The comments primarily sought clarification on whether specific direct costs were eligible.

The Commission has provided additional detail on which direct costs are eligible, and which are not, for a participant to include in its claim for compensation.

In addition, ancillary services costs has been included as an eligible category of direct cost for which a participant may claim compensation. The Commission understands that the costs incurred by an ancillary service generating unit or load are likely to only be direct costs.

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<sup>28</sup> Expert panel, pp. 5-8; NGF, p. 3; International Power, p. 3; TRUenergy, p. 5.

The guidelines have been amended to reflect these changes.

### 3.11 Calculation of opportunity costs

In the proposed guidelines, the definition of opportunity cost, determining whether opportunity cost is relevant to a participant, and methods to estimate opportunity costs were detailed.

Most submissions<sup>29</sup> raised various comments on this section of the proposed guidelines. The Commission recognises that estimating opportunity costs is the most conceptually and analytically challenging section of the guidelines, as it involves determining a value for a missed opportunity, rather than a cost incurred.

In considering the broad spectrum of comments received, the Commission has significantly restructured and amended this section of the guidelines in the following ways:

- simplified the section on defining opportunity cost and moved the more descriptive text to Appendix A;
- added in a section on valuing opportunity costs – to assist claimants to conceptualise what they are trying to assign a value to;
- simplified the section on determining whether opportunity costs are relevant to a claimant and moved the more descriptive text to Appendix A;
- added in a section on the principles for selecting a method for valuing opportunity costs – this section replaced the discussion on the categorisation of generating plants and the consequential methodologies for calculating opportunity costs. The hierarchy of principles provides claimants with flexibility in selecting an appropriate method to best calculate their opportunity costs. In taking into consideration the value of the total compensation being sought against the evidence that will need to be provided to support the claim, a claimant may select a more appropriate (and possibly expensive) method to give a more accurate value of its opportunity costs;
- removed the section on exceptional cases – as the hierarchy of principles provides sufficient flexibility, the Commission determined that this section is no longer considered necessary; and
- included in Appendix A some illustrative examples of how to apply the principles – this section applies the discussion on the categorisation of plants and the consequential methodologies as examples of the first two principles for valuing opportunity costs. In the event of any dispute, the guidelines prevail over this Appendix.

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<sup>29</sup> Expert panel, pp. 8-15; NGF, pp. 3-4; EUAA, pp. 4-5; EnergyAustralia, pp. 1-3; International Power, pp. 3-4; TRUenergy, pp. 1-6.

### 3.12 Structure of guidelines

The proposed guidelines mixed descriptive explanatory notes within the details of lodging and calculating the cost of a compensation claim.

One submission<sup>30</sup> suggested that the guidelines may be more effective if the Commission's explanation is separated from the details of lodging a compliant compensation claim.

In considering this suggestion, the Commission recognised the benefit in explaining the process of applying for compensation within the broader context of the compensation regime. The guidelines clarify that "notification of an intent to claim compensation" must firstly be lodged in accordance with the Rules.<sup>31</sup> The intent to claim compensation becomes a claim for compensation when sufficient information has been provided to the Commission and panel to enable the claim to be assessed. The guidelines then specify the information to be provided, with reference to other sections of the guidelines. The responsibilities of the claimant when providing the relevant information is also explained.

The Commission has also simplified the section on the calculation of opportunity costs by moving much of the descriptive detail into Appendix A. For more discussion on this change, please see section 3.11 of this document.

### 3.13 Role of the panel in determining compensation

In the proposed guidelines, there was reference to the role of the panel in providing advice to the Commission on compensation, as required in clause 3.14.6 of the Rules.

One submission<sup>32</sup> appears to have misunderstood the role of the panel in the compensation process, and another submission<sup>33</sup> suggested prescribing some factors on the decisions of the panel.

In considering a claim for compensation, the Rules require the Commission to "establish a three member panel"<sup>34</sup> from the group of persons available for appointment to the dispute resolution panel. The panel members are appointed by the Dispute Resolution Adviser, not the Commission, to ensure the panel is independent in its advice on compensation. Use of the panel, and the number of persons on the panel, is not at the discretion of the Commission to determine. Given the independence of the panel, it would also be inappropriate for the guidelines to impose any factors on how the panel should provide its advice to the Commission. Whether compensation should be paid, and the amount payable, is determined by the Commission, not the panel. However, the Commission will take into account the

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<sup>30</sup> Expert panel, pp. 2-3.

<sup>31</sup> Clause 3.14.6(b) of the Rules.

<sup>32</sup> TRUenergy, p. 5.

<sup>33</sup> EUAA, p. 5.

<sup>34</sup> Clause 3.14.6(g) of the Rules.

advice of the panel on a compensation claim and any submissions received on the panel's draft report or the Commission's draft decision, in making its final decision.

### **3.14 Matters considered out of scope for the guideline**

There were a few matters raised in submissions that, without discussing the merits of such matters, are considered out of scope for the development of these compensation guidelines. These matters, and an explanation of why they are considered out of scope, are discussed below.

#### **3.14.1 Market ancillary services pricing**

Two submissions<sup>35</sup> raised concerns that the second cost component of market ancillary services pricing is not eligible for compensation.

The Commission understands that these submissions refer to a market participant that does not meet the current eligibility criteria in the Rules in respect of its ancillary service generating unit. That is, its ancillary service price in a relevant dispatch interval is not less than the price specified in the relevant market ancillary service offer. However, the submissions claim that if the second cost component of providing this service i.e. the cost of providing the service due to the participant's reduced participation in the energy market (which is not part of its ancillary service price), is recognised in the eligibility criteria and added to the price specified in the relevant market ancillary service offer, then the participant would (and should) be eligible for compensation.

To consider this suggestion, the Commission needs to be in a position to be able to review, and if necessary amend, the existing eligibility criteria for compensation for ancillary service generating units i.e. clause 3.14.6(a3) of the Rules. This would require a formal Rule change process to be undertaken. This is, therefore, beyond the scope of this guidelines consultation process.

#### **3.14.2 Generator's loss adjusted dispatch offer price**

One submission<sup>36</sup> raised a concern that the participant's offer price, as referred to the regional reference node, is the appropriate price that should be compared to the spot price, not the price prior to this referral process.

The Commission understands that this submission is suggesting that a generator's loss factor adjusted dispatch offer price, rather than the generator's unadjusted dispatch offer price (which the Rules refer to), should be compared to the spot price to determine whether a scheduled generator is eligible to claim compensation.

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<sup>35</sup> NGF, pp. 1-2; International Power, pp. 1-2.

<sup>36</sup> International Power, p. 2.

Once again, the Commission needs to be in a position to be able to review, and if necessary amend, the existing eligibility criteria for compensation for scheduled generators i.e. clause 3.14.6(a) of the Rules, to consider such a suggestion. This would require a formal Rule change process to be undertaken, as acknowledged by the stakeholder. This is, therefore, beyond the scope of this guidelines consultation process.

### **3.14.3 Existence of the cumulative price threshold**

One submission<sup>37</sup> opposed the existence of the CPT, as a fundamental concern, as it has the potential to distort investment signals by distorting the operation of the energy only market.

As discussed in section 3.4 of this document, the CPT is also one component of the fundamental design of the NEM that provides investment signals and manages the risks faced by retailers and other market participants. In order to consider the merits of an energy only market without a CPT mechanism, the Commission would need to undertake a Rule change process. This is, therefore, beyond the scope of this guidelines consultation process.

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<sup>37</sup> EUAA, p. 3.