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Dear Commissioners,

**Reference: EPR0026**

## **A: Introduction**

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TRUenergy welcomes the opportunity to provide a response to the Australian Energy Market Commission's (AEMC) Issues paper on the "Review of Arrangements for Compensation following an Administered Price, Market Price Cap or Market Floor Price."

The AEMC initiated this review to ensure that specific aspects of the market frameworks which provide investment signals and manage the risks to market participants caused by periods of high wholesale prices are robust and effective in managing efficient market outcomes.

We support this review on the basis that it seeks to improve this area of the National Electricity Rules (Rules). Following this review, we expect that the compensation arrangements in the Rules that apply following an Administered Price, Market Price Cap or Market Floor Price will be tightened up making them more efficient and robust. We hope that our suggestions in this paper will help achieve this objective.

We look forward to working with the AEMC to help facilitate the required changes to this part of the Rules. We consider our suggestions will improve the clarity of the compensation provisions in the Rules under clause 3.8.16. In this regard, we consider our suggestions are consistent with the National Electricity Objective (NEO).

## B: Key issues

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TRUenergy supports the AEMC's decision to review the relevant clauses in the National Electricity Rules (Rules) that apply to the compensation arrangements following an Administered Price, Market Price Cap or Market Floor Price.

After the Synergen Power compensation claim, it became apparent that a number of stakeholders and the Panel had different views on how this area of the Rules should be interpreted. As a consequence of this, the AEMC decided to conduct a review on this area of the Rules. In response to the release of its Issues paper, we make the following key points.

### 1 Are there any additional matters that should be included in the scope of this review?

TRUenergy considers no other matters should be added to the scope of this review.

In the period that the National Electricity Market (NEM) has been operational, the rules that apply to the compensation arrangements have been triggered on only a few occasions. On those rare occasions, TRUenergy has not been directly impacted. So, we are probably not best placed to comment on whether there should be some additional matters included in this review.

### 2 What is the purpose of paying compensation under clause 3.14.6 of the Rules?

TRUenergy regards the purpose 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
- Market Participants to supply energy and other services during an Administered Price Period.

In addition, we agree that the compensation regime provided in 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 the risks faced by other market participants".<sup>1</sup>

In short, providing for compensation to be payable during high stress events encourages participants to behave in a manner that contributes to the reliable operation of the national electricity system, minimises electricity supply interruptions, which is in the interests of all consumers.

### 3 Do the objectives of paying compensation as currently set out in the Rules accurately reflect the policy objectives that the compensation provisions were, or should be designed to achieve? If not, what should the objectives be?

TRUenergy believes that the objectives of paying compensation as set out in the Rules reflect the policy objectives that the compensation provisions were designed to achieve.

Overall, we consider the Rules to be appropriate in this area. In short, we agree that the objective of paying compensation under clause 3.14.6 of the Rules should be 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.

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<sup>1</sup> Compensation guidelines , section 5, p.3

**4 In the case of multiple objectives and/or competing objectives, what is the appropriate balance between them?**

TRUenergy disagrees that competing objectives exist under clause 3.14.6 of the Rules.

We consider that both of the objectives in this clause are aligned. However, to the extent any competition between these objectives exist, then we believe that maintaining the incentive to invest in plants which provide services during peak periods should be the primary priority. This incentive should remain strong as long as the compensation arrangements properly cover the costs of providing these investments.

**5 Do the objectives of paying compensation suit all of the different participants and circumstances in which compensation is payable?**

TRUenergy considers the Panel's interpretation of clause 3.14.6 of the Rules in the Synergen case is consistent with the intent of the objectives of this clause.

We can not say for sure if this suits all of the different participants and circumstances in which compensation is payable. However, we consider the Panel has interpreted the intention of this clause correctly.

**6 In what circumstances should persons be eligible to apply for compensation, having regard for the objectives of paying compensation?**

TRUenergy considers the Synergen case accurately sets out the circumstances in which a *scheduled generator* is eligible to apply for compensation having regard to the objectives of paying compensation in clause 3.14.6 of the Rules. In the case of a scheduled generator, these circumstances apply under:

- Clause 3.14.6 (a) of the Rules that state a scheduled generator is able to claim compensation " ....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 minimum requirement specified by its *network dispatch offer* for that *trading interval*.
- Clause 3.14.6 (a3) of the Rules that state that a market participant may also be eligible to claim compensation in respect of an ancillary service generating unit or an ancillary service load' ...if due to the application of an *administered price cap*, the resultant *ancillary service price* for that *ancillary service generating unit* or *ancillary service load* in any *dispatch interval* is less than the price specified in the relevant *market ancillary service offer*.

We regard that the interpretation of the term "**dispatch offer**" as applied in the Synergen compensation claim is consistent with the objectives of 3.14.6 of the Rules. We understand that the interpretation of the term "dispatch offer" was first raised in the context of the Synergen claim for compensation under clause 3.14.6 of the Rules. In particular, we note the varying views in the market in relation to the interpretations of the objectives of Section 3.14.6 of the Rules.

We understand that AGL & Synergen had different views 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 that the objectives of reliability and security are met. Whilst acknowledging the importance of balancing these objectives, we do not believe that they represent a conflict of the objectives of clause 3.14.6, even though they were articulated this way in the Synergen case. In short, whilst we can see that the interpretation of clause 3.14.6 of the Rules that we espouse can have certain undesirable consequences in terms of their impact on efficient pricing, we remain clear that the objectives of the compensation provisions in clause 3.14.6 definitely give a priority to the reliability and security of the supply of energy over any other objective. Therefore, we agree with the Panel in the Synergen case that the Rules have been correctly by giving priority to the reliability and security of supply.

We believe that clause 3.8.22 of the Rules should not disentitle a claimant from making a compensation claim, particularly if the variations made by re-offering capacity into lower price bands are made to further the objectives of clause 3.14.6 of the Rules. In our view, clause 3.8.6 of the Rules requires generators to make dispatch offers in advance for each 48 hour period for the trading day. These dispatch offers remain firm. However, clause 3.8.22 makes it clear that “re-bids” can be made provided they are for a verifiable reason.

We agree with the Panel in the Synergen case 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 subsequent re-bid made in accordance with clause 3.8.22 does not alter the nature of the original “dispatch offer”.

We consider that this interpretation of clause 3.14.6 of the Rules is consistent with the compensation objectives in clause 3.14.6 of the Rules.

### **7 Should the reference to “market suspension” be removed from clause 3.14.6 (a), (a2) & b? If not, why not?**

TRUenergy supports the removal of the term “market suspension” from clause 3.14.6 (a), (a2) & b of the Rules. However, the principle should remain that if a participant is required to operate to support security during a market suspension in a manner that incurs costs in excess of the revenue it recovers from the market – compensation should be payable (in line with the principles outlined above).

Clause 3.14.6 (a), (a2) and (b) makes reference to “market suspension” on occasions where compensation maybe payable to relevant market participants. According to the AEMC, clauses 3.14.6 (a) and (a2) draw a link between the applications of an administered price cap during a market suspension. But, the AEMC notes that:

- the application of an APC can only be invoked in the circumstances set out in clause 3.14.2. Market suspension is not one of them
- clause 3.14.5 of the Rules sets out how prices will be determined during market suspension and makes no application of APC; and
- clause 3.14.3 (a) of the Rules provides that if AEMO declares the spot market to be suspended in a region then all the spot prices and ancillary service prices are to be set in accordance with clause 3.14.5. There is no mention of setting the spot price to the APC.

Hence, in the absence of strong legal advice that provides a solid reason for why the term “market suspension” should not be removed from clause 3.14.6 (a), (a2) & b of the Rules, then we are comfortable with this action.

### **8 Are there any other issues in respect of the criteria for eligibility to apply for compensation that would benefit from further consideration in this review?**

TRUenergy considers there are no other issues in respect of the eligibility to apply for compensation that would benefit from further consideration in this review.

### **9 In light of the confidentiality issue and other issues discussed in this Issues paper, is the AEMC the most appropriate body to be assessing compensation claims of this nature?**

TRUenergy believes that it is appropriate for the AEMC to explore further the issue of whether there are other organisations better suited to assess the claims for compensation under clause 3.14.6 of the Rules. In this regard, it could be that AEMO may be an appropriate organisation to undertake this task. As such, further consideration should be given to this option.

During the Synergen compensation case, it became obvious that the AEMC’s legislative powers to protect confidential information under the AEMC Act 2004 may have prevented effective consultation. The Panel recommended that that some parts of the Synergen compensation claim could not be considered confidential in

order to promote effective consultation. It turns out that this decision was inconsistent with the requirement to protect confidential information in the AEMC Act 2004.

The Issues paper makes it clear that AEMO can use and disclose certain information given to it in confidence in certain circumstances. For example, the AEMC argues that under section 54(H) (1) of the NEL, AEMO is authorised to disclose protected information if AEMO is of the opinion that:

- (a) the disclosure of the information would not cause detriment to the person who has given it to a person from whom that person received it; or
- (b) although the disclosure of information would cause detriment to such a person, the public benefit in disclosing it outweighs the detriment.

AEMO appears to be less restricted than the AEMC to use and disclose certain information given to it in an application for compensation under clause 3.14.6. On this basis, we believe that it should be considered as a viable alternative to the AEMC to assess compensation claims under clause 3.14.6 of the Rules. We support the further investigation of this option by the AEMC.

**10 Is it necessary in all instances to appoint a three member panel to assess a claim under section 3.14.6? If not, what is a more appropriate arrangement?**

TRUenergy believes that it is inappropriate to appoint a three member panel in all instances to assess a claim under clause 3.14.6 of the Rules.

The requirement to convene a three member panel to assess compensation claims under section 3.14.6 of the Rules in all instances could prove costly. As we understand it, the final costs of the Panel in providing advice to the AEMC on Synergen Power's compensation claim was equivalent to 60% of the amount of compensation payable to Synergen.

We think that it would be beneficial to all parties involved to set a threshold level of compensation before a claim could be referred to a three member panel. In this regard, we submit that a minimum threshold of \$5,000,000 dollars should apply for compensation cases considered under clause 3.14.6 of the Rules. Convening a three member panel for compensation claims under clause 3.14.6 of the Rules for cases where compensation is below this threshold level is inefficient. In short, it would not be surprising if the costs of convening the Panel exceeded the compensation payout for most claims under this threshold level. Hence, we support the AEMC's endeavours in exploring whether it is necessary to convene a three member panel for all compensations claims under clause 3.14.6. We urge the AEMC to give due consideration to our recommendation on this issue.

Smaller claims than the threshold could be dealt with via AEMO seeking an independent opinion from an expert who will consult with the market in a similar to manner to how compensation for directions occurs. A similar parallel with the directions regime could be implemented in which precedents set by experts would apply for a period post decision if the situation on which the compensation was paid reoccurred. This regime has operated reasonably well in the past.

**11 Should the AEMC be required to notify the market that it has received, and or has formally commenced consideration of a claim under clause 3.14.6 of the Rules?**

TRUenergy considers that the AEMC should be required to notify the market that it has received or formally commenced a claim under clause 3.14.6 of the Rules.

Clause 3.14.6 of the Rules sets out a time frame for processing compensation claims including the publishing of documents and undertaking a public consultation process. But, it does not publish a time frame to formally notify the public that it has received notification of an intention to claim or commence a formal assessment. Thus, it could be that the wider market may not be aware of a claim when it is being made.

For that reason, we support changing clause 3.14.6 of the Rules so that it requires the AEMC to notify the broader market that it has received or commenced a claim under clause 3.14.6 of the Rules. The additional transparency and openness of this adjustment should help facilitate a broader consultation process. And, this can only be beneficial to the outcome of any final decision.

**12 Should some flexibility be built into the timing associated with processing a claim to provide for information gathering, delays or extensions?**

TRUenergy believes that some flexibility needs to be built into the timing associated with processing a claim for compensation to provide for information gathering, delays or extensions. However the need to rapidly resolve claims should also be a priority and any extensions should only be allowed if material improvements in the quality of decisions are likely. It should be noted that claimants may be exposed to working capital stresses if claims payments are delayed due minor process issues.

Clause 3.14.6 of the Rules does not provide for any delays or extensions for processing a compensation claim. In the Synergen case, it became very difficult for the Panel to verify the claims or clarify the details of a compensation claim once the timeframes in the Rules commence. In this regard, the experience of the Synergen case demonstrated that this was a weakness in the current drafting of clause 3.14.6 of the Rules.

Therefore, we recommended that clause 3.14.6 is adjusted changed to build in some additional time for the AEMC to process a claim for compensation to provide for information gathering, delays or extensions, noting that this should be limited to protect the valid interests of claimants in a rapid resolution of claims.

**C: Conclusion**

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TRUenergy looks forward to working with the AEMC in its efforts to improve the compensation arrangements under clause 3.14.6 of the Rules.

Following this review, we expect that the compensation arrangements in the rules that apply following an Administered Price, Market Price Cap or Market Floor Price will improve to make them more efficient and robust. We hope our suggestions in this paper will help achieve this objective.

We thank the AEMC for its consideration of the issues that we have raised in this submission. If you have any enquiries regarding this submission, please feel free to contact Mr. Con Noutso - Regulatory Manager at TRUenergy on Tel: 03 8628 1240

Regards



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